

SESSION OF 2016

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 367**

As Amended by Senate Committee of the Whole

**Brief\***

SB 367 would create and amend law related to the Kansas juvenile justice system, as follows.

***Case, Probation, and Detention Length Limits***

Effective July 1, 2017, the bill would establish the following overall case length limits for juvenile offenders to remain under the jurisdiction of the court:

- For misdemeanors, up to 12 months;
- For low-risk and moderate-risk offenders adjudicated for a felony, up to 15 months (subject to provision below); and
- For high-risk offenders adjudicated for a felony, up to 18 months (subject to provision below).

There would be no overall case length limit for a juvenile adjudicated for a felony that would constitute an off-grid felony or nondrug severity level 1 through 4 felony, if committed by an adult.

If a juvenile is adjudicated for multiple counts, the maximum overall case length would be calculated based on the most severe count or any other count at the court's discretion. Multiple adjudicated counts would not be run

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

consecutively. If a juvenile is adjudicated for multiple cases simultaneously, the court would run those cases concurrently.

Once the overall case length limit expires, the court's jurisdiction would terminate and could not be extended.

The court would establish a specific probation term based on the most serious adjudicated count and the results of the risk and needs assessment, and the probation term could not exceed the overall case length limit. The bill would establish the following probation length limits:

- Low-risk and moderate-risk offenders adjudicated for a misdemeanor and low-risk offenders adjudicated for a felony, up to 6 months;
- High-risk offenders adjudicated for a misdemeanor and moderate-risk offenders adjudicated for a felony, up to 9 months; and
- High-risk offenders adjudicated for a felony, up to 12 months.

Probation could be extended only if a juvenile needs time to complete an evidence-based program determined to be necessary based on the results of a validated risk and needs assessment. Prior to the initial extension, the court would be required to find and enter into the written record the criteria permitting extension. Extensions would be granted incrementally and could not exceed the overall case length limit.

The probation term limits would not apply to adjudications for any off-grid crime, rape, aggravated criminal sodomy, or second-degree murder. Offenders with these adjudications could be placed on probation for a term consistent with the overall case length limit.

The court would be required to establish a specific term of detention when placing a juvenile in detention, which could

not exceed the overall case length limit. There would be a cumulative detention limit of 30 days over the course of the offender's case, except there would be no cumulative detention limit for juveniles adjudicated for an off-grid felony or nondrug severity level 1 through 4 person felony.

*[Note: amendments related to these provisions are made in other areas of the bill, as noted elsewhere in this brief.]*

### ***Graduated Responses for Technical Violations***

The bill requires the Kansas Department of Corrections (KDOC) to consult with the Supreme Court in adopting rules and regulations by January 1, 2017, for a statewide system of structured community-based graduated responses for technical probation violations, conditional release violations, and sentence condition violations to be used by community supervision officers. The responses would include sanctions that are swift and certain to address violations based on the severity of the violation and incentives to encourage positive behaviors, while taking into account the juvenile's risks and needs.

Community supervision officers would use these responses based upon the results of a risk and needs assessment of the juvenile. A technical probation violation could be considered by the court for revocation only if it is a third or subsequent technical violation, there are prior documented failed responses, and the community supervision officer has determined and documented that graduated responses will not suffice. Unless the juvenile poses a significant risk of physical harm to another or damage to property, the community supervision officer would issue a summons rather than request a warrant for such a violation. The statute governing issuance of warrants to take a juvenile into custody would be amended, effective July 1, 2017, to reflect this limitation on warrants, to remove a reference to placement, and to specify that the warrant's

designation of where the juvenile is to be taken is to be made pursuant to the statute governing the procedure for taking a juvenile into custody.

The community supervision officer responsible for oversight of a juvenile on probation would be required to develop a case plan with the juvenile and the juvenile's family. The Department for Children and Families (DCF) and the local board of education could participate in the development of the case plan when appropriate. The case plan would incorporate the results of the risk and needs assessment, referrals to programs, and documentation of violations and graduated responses, and it would clearly define the role of each person or agency working with the juvenile. If the juvenile is later committed to the custody of the Secretary of Corrections (Secretary), the case plan would be shared with the juvenile correctional facility (JCF).

*[Note: amendments related to these provisions are made in other areas of the bill, as noted elsewhere in this brief.]*

### ***Reintegration Plan***

Effective July 1, 2017, if the court places a juvenile outside the home at a dispositional hearing and no reintegration plan is part of the record of the hearing, a written reintegration plan would be prepared by the person with custody (or, if directed by the court, a community supervision officer) and submitted to the court within 15 days of the initial order of the court. If the persons necessary for the success of the plan do not agree, the person or entity with custody would be required to notify the court and the court to set a hearing.

*[Note: amendments related to these provisions are made in other areas of the bill, as noted elsewhere in this brief.]*

***Immediate Intervention; Multidisciplinary Team;  
Alternative Means of Adjudication***

Effective January 1, 2017, a court would be required to appoint a multidisciplinary team to review cases where a juvenile fails to substantially comply with the development of the immediate intervention plan. This team could be a standing team or could be appointed for a specific juvenile. The Supreme Court would be required to appoint a multidisciplinary team facilitator in each judicial district, and could appoint a convener and facilitator for a multiple-district multidisciplinary team.

The team facilitator would be required to invite the following to be part of the team: the juvenile; the juvenile's parents, guardians, or custodial relative; the superintendent of schools or designee; a clinician who has training and experience coordinating behavioral or mental health treatment for juveniles, if such clinician is available; and any other person or agency representative who is needed to assist in providing recommendations for the particular needs of the juvenile and family. Any invited person could decline to serve and would incur no civil liability for declining.

Effective January 1, 2017, the Department of Corrections would be required to collaborate with the Office of Judicial Administration (OJA) to develop standards and procedures to guide the administration of an immediate intervention process and programs and alternative means of adjudication, including contact requirements, parent engagement, graduated response and discharge requirements, and process and quality assurance.

*[Note: amendments related to these provisions are made in other areas of the bill, as noted elsewhere in this brief.]*

### ***Juvenile Justice Oversight Committee***

The bill would establish the Kansas Juvenile Justice Oversight Committee to oversee the implementation of reforms in the juvenile justice system. The Committee's 19 members would be the Governor or designee; one Representative appointed by the Speaker of the House; one Representative appointed by the House Minority Leader; one Senator appointed by the Senate President; one Senator appointed by the Senate Minority Leader; the Secretary of Corrections or designee; the Secretary for Children and Families or designee; the Commissioner of Education or designee; the KDOC Deputy Secretary of Juvenile Services or designee; the KDOC Director of Community-Based Services or designee; two district court judges appointed by the Chief Justice; one chief court services officer appointed by the Chief Justice; one member of the OJA appointed by the Chief Justice; one juvenile defense attorney appointed by the Chief Justice; one juvenile crime victim advocate appointed by the Governor; one member of a local law enforcement agency appointed by the Governor; one member of a prosecuting attorney's office appointed by the Governor; and one member from a community corrections agency appointed by the Governor. The bill would require these appointments be made by January 1, 2017, and the Committee would be required to meet within 90 days of appointment and at least quarterly thereafter. The Committee would select a chairperson and vice-chairperson, with ten members constituting a quorum. Appointed members of the Committee would serve for two-year terms and be eligible for reappointment.

The Committee would be charged with various duties related to the performance, evaluation, and improvement of the juvenile justice system, and it would be required to issue an annual report containing specified information to the Governor, Senate President, Speaker of the House, and Chief Justice on or before November 30, beginning in 2017.

The bill would require KDOC and the Committee to explore methods of exchanging confidential data among all parts of the juvenile justice system under certain conditions and constraints specified by the bill. KDOC would be authorized to use grant funds, allocated state funds, or any other accessible funding necessary to create a data exchange system. All state and local programs involved in the care of juveniles involved in the juvenile justice system or the child in need of care system would be required to cooperate in the development and utilization of such system.

### ***Training***

The bill would require KDOC, in conjunction with the OJA, to provide not less than semi-annual training on evidence-based programs and practices. This training would be mandatory for all individuals who work with juveniles adjudicated or participating in an immediate intervention, including community supervision officers, juvenile intake and assessment workers, juvenile corrections officers, and any individual who works with juveniles through a contracted organization providing services to juveniles.

OJA would be required to designate or develop a training protocol for judges, county and district attorneys, and defense attorneys who work in juvenile court. OJA would be required to provide annual reports to the Legislature and to the Oversight Committee with data regarding completion of this training, including the number of judges and attorneys listed above who did and did not complete the training.

The Attorney General would be required to collaborate with the Kansas Law Enforcement Training Center and the State Board of Education to promulgate rules and regulations by January 1, 2017, creating skill development training for responding effectively to misconduct in school while minimizing student exposure to the juvenile justice system. Such training would include information on adolescent development, risk and needs assessments, mental health,

diversity, youth crisis intervention, substance abuse prevention, trauma-informed responses, and other evidence-based practices in school policing to mitigate student juvenile justice exposure. The superintendent (or designee) of each school district and any law enforcement officer assigned primarily to a school would be required to complete this training.

### ***Immediate Intervention Development / Grants***

KDOC would be required to create a plan and provide funding to incentivize the development of immediate intervention programs. Funds allocated for such plan could be used only to make grants to immediate intervention programs that adhere to the standards and procedures for such programs developed pursuant to the bill, and would have to be based on the number of persons served and other requirements established by KDOC. The plan could include requirements for grant applications, organizational characteristics, reporting and auditing criteria, and other eligibility and accountability standards.

Existing law would be amended to add “community-based alternatives to detention” to the list of purposes for which the Secretary may make grants to counties for juvenile community corrections services.

### ***Funds***

The bill would rename the Juvenile Detention Facilities Fund the “Juvenile Alternatives to Detention Fund” and would change its purpose from the retirement of debt of facilities for the detention of juveniles or the construction, renovation, remodeling, or operational costs of facilities for the detention of juveniles to the development and operation of community-based alternatives to detention. The definition of “operational costs” would be amended to include the costs of operating community-based alternatives to detention for juveniles. The



bill would amend statutes related to driver's license exam fees, reinstatement fees for failure to comply with a traffic citation, municipal court costs, and municipal court assessments to reflect the change to the Fund's name.

The bill also would create the Kansas Juvenile Justice Improvement Fund, to be administered by KDOC. All expenditures from the Improvement Fund would be for the development and implementation of evidence-based community programs and practices for juvenile offenders and their families by community supervision offices, including juvenile intake and assessment, court services, and community corrections. On or before June 30 of each year, the Secretary would be required to determine and certify to the Director of Accounts and Reports the amount in each account of the State General Fund of a state agency that the Secretary has determined is an actual or projected cost savings due to cost avoidance from decreased reliance on incarceration in a JCF or youth residential center (YRC) placement, with a baseline calculated on the cost of incarceration and placement in FY 2015. This certified amount would then be transferred to the Improvement Fund. Prioritization of funds would be given to regions demonstrating a high rate of out-of-home placement of juvenile offenders *per capita* that have few existing community-based alternatives. During FY 2017 and FY 2018, the Secretary would be required to transfer an amount not to exceed \$8,000,000 from appropriated moneys from any available special revenue fund or funds budgeted for the purposes of facilitating the development and implementation of new community placements in conjunction with the reduction in out-of-home placements.

### ***Community Integration Programs***

KDOC would be required to develop, for use by the courts, community integration programs for juveniles who are ready to transition to independent living. These programs

would be designed to prepare juveniles to become socially and financially independent from such program.

*[Note: amendments related to these provisions are made in other areas of the bill, as noted elsewhere in this brief.]*

### ***Earned Time and Earned Discharge***

The statute governing computation of sentence would be amended to incorporate the addition of overall case length limits and to require earned time calculations be incorporated in sentence calculation. New law would require the Secretary to promulgate rules and regulations by January 1, 2017, regarding earned time calculations for purposes of determining a juvenile's release date.

The Supreme Court would be required to consult with KDOC to establish rules for a system of earned discharge for juvenile probationers, to be applied by all community supervision officers. Earned discharge credits would be awarded to a probationer for each full calendar month of compliance with terms of supervised probation, pursuant to these rules.

### ***Speedy Trial and Preliminary Hearing Rights***

The bill would establish statutory rights to a speedy trial and to a preliminary hearing for any juvenile alleged to be a juvenile offender.

### ***Supervision Fee***

The bill would remove a provision prohibiting early release from supervision until the supervision fee has been paid.

### ***Code for Care of Children Amendments***

Effective July 1, 2019, various statutes within the Code for Care of Children (CINC Code) would be amended to remove “juvenile detention facility” from the definition of “secure facility” and would require youth residential facilities to maintain sight and sound separation between children in need of care with an open juvenile offender case and children in need of care without an open juvenile offender case. Juvenile detention facilities would be removed as a placement option under the CINC Code, unless the child is also alleged to be a juvenile offender and the placement is authorized under the Juvenile Code.

### ***Juvenile Code Amendments***

The bill would make numerous amendments to various statutes within the Juvenile Code. *[Note: some of the additions and amendments made to the juvenile code by the bill are discussed under other headings related to specific topics, rather than under this heading.]*

#### ***Definitions***

The definitions section of the Juvenile Code would be amended to:

- Add definitions for “community supervision officer,” “detention risk assessment tool,” “evidence-based,” “graduated responses,” “immediate intervention,” “overall case length limit,” “probation,” “reintegration plan,” “secretary,” and “technical violation”;
- Amend definitions for “institution,” “juvenile intake and assessment worker,” “juvenile offender,” and “risk assessment tool” (changing its title to “risk and needs assessment” and amending the definition);

- Amend various definitions to update statutory references or change references to reflect the assumption of the duties of the Juvenile Justice Authority (JJA) and the Commissioner of Juvenile Justice by KDOC and the Secretary of Corrections, pursuant to 2013 Executive Reorganization Order 42;
- Remove the definition for “sanctions house”; and
- Provide a sunset date of July 1, 2018, for the definition of “youth residential facility.”

### *Jurisdiction*

Effective July 1, 2017, the statute governing jurisdiction would be amended to add the overall case length limit and to remove order of assignment to community corrections as events that will end the court's jurisdiction, and to modify another event from conviction of a new felony while incarcerated in a JCF to conviction of a crime as an adult. The term “aftercare” would be changed to “conditional release.” The bill would replace a provision prohibiting continued placement of a juvenile as a child in need of care if adjudicated for a felony or a second or subsequent misdemeanor with a provision requiring the Secretary for Children and Families to address issues of abuse and neglect by parents and prepare parents for the child's return home and requiring court services, community corrections, and KDOC to address the risks and needs of the juvenile offender according to the risk and needs assessment. The Secretary for Children and Families would be required to collaborate with KDOC to furnish services ordered in the child in need of care proceeding during the time of any placement in the custody of the Secretary of Corrections.

### *Juvenile Offender Information*

Effective July 1, 2017, the definition of “juvenile offender information” (for the purposes of reporting to the central repository by juvenile justice agencies) would be amended to specify certain data that must be included related to the use of the detention risk assessment tool, individual-level data for juveniles on probation, costs for juveniles on probation, individual-level data regarding juvenile filings, risk and needs assessment override data, violation data for juveniles on probation, and certain information for juveniles in immediate intervention plans.

### *Juvenile Taken into Custody*

Effective January 1, 2017, the statute governing when and how a juvenile may be taken into custody would be amended to remove the current authority given a court services officer, juvenile community corrections officer, or other person authorized to supervise juveniles to take a juvenile into custody when there is probable cause to believe the juvenile has violated a term of probation or placement. The authority of these officers to arrest a juvenile or request a juvenile’s arrest without a warrant for violation of a condition of release would be removed and replaced with authority to request a warrant by giving the court a written statement that the juvenile has violated a condition of conditional release from detention or probation for the third or subsequent time and that the juvenile poses a significant risk of physical harm to another or damage to property. An existing provision directing that a juvenile taken into custody be brought to an intake and assessment worker, before the court, or to another designated official or facility would be replaced with a provision directing that the juvenile be brought to the custody of the juvenile’s parent or other custodian, unless there are reasonable grounds to believe such action would not be in the best interests of the child or would pose a risk to public safety or property. If the juvenile can not be so delivered, the officer may issue a notice to appear or contact and deliver the

juvenile to an intake and assessment worker for completion of the intake and assessment process. Provisions giving certain officials and workers discretionary authority to release the juvenile in the absence of court order or upon completion of the intake and assessment process would be changed to make release mandatory. A provision allowing a person 18 years of age or older taken into custody for a juvenile offense to be detained in jail if detention is necessary would be changed to permit such detention only if the person is eligible for detention and all suitable alternatives have been exhausted.

This statute would be further amended by adding provisions allowing a law enforcement officer who detains a juvenile who is not immediately taken to juvenile intake and assessment services (intake and assessment) to serve a written notice to appear on the juvenile that includes specified information, including the location and phone number of the intake and assessment office where the juvenile will need to appear. The juvenile or a parent or guardian would be required to contact the intake and assessment office specified in the notice within 48 hours, excluding weekends and holidays. Before release, the juvenile would be required to give a written promise to call within the specified time by signing the notice. The officer would retain the original notice and a copy would be given to the juvenile and a parent or guardian, and then the juvenile would be released. The officer would be required to cause a complaint to be filed with juvenile intake and assessment services charging the crime stated in the notice to appear, with a copy to be provided to the district or county attorney. If the juvenile fails to contact intake and assessment as required in the notice to appear, intake and assessment would be required to notify the district or county attorney. The bill would require the notice to appear and the complaint be provided to the juvenile in a single citation.

### *Criteria for Detention*

Effective January 1, 2017, the existing criteria for detention and removing a child from the custody of a parent would be replaced with the following criteria: a court could not order removal from a parent's custody without first finding that a detention risk assessment has assessed the juvenile as detention-eligible, or there are grounds to override the results of the detention risk assessment and the court finds probable cause that community-based alternatives to detention are insufficient to secure the presence of the juvenile at the next hearing (as shown by the record) or protect the safety of another person or property. The court would be required to state the basis for these findings in writing. Community-based alternatives to detention could include release on a promise to appear; release to a parent, guardian, or custodian upon the youth's assurance; release with reasonable restrictions; release to a voluntary or mandatory court-ordered community supervision program; or release with electronic monitoring with various levels of restriction. Placement in a juvenile detention center would be prohibited where it is due solely to a lack of supervision alternatives or service options; a parent avoiding legal responsibility; a risk of self-harm; contempt of court; violation of a valid court order; or technical violations of conditional release, unless there is probable cause the juvenile poses a significant risk of harm to others or damage to property, or the applicable graduated responses or sanctions protocol allows such placement.

### *Placement in Jail*

Effective January 1, 2017, the statute prohibiting placement in a jail except in certain specified circumstances would be amended to make it subject to the statutes governing criteria for detention and procedures when a juvenile is taken into custody. Under the provisions of this bill, those statutes permit placement in a jail only for a person over the age of 18 who is eligible for detention, when all suitable alternatives have been exhausted. The statute also

would be amended to reflect the elimination of youth residential facilities.

#### *Extended Detention; Hearings*

Effective July 1, 2017, the statute governing extended detention and detention hearings would be amended to narrow the justification for extended detention to the criteria listed in the statute setting forth the criteria for detention. The bill would add detention risk assessment tool results to the evidence that may be considered by the court at the detention hearing, and would require the court to record any reasons for overriding a detention risk assessment tool score. A provision allowing temporary custody where the court determines detention is not necessary but release to the custody of a parent would not be in the best interests of the juvenile would be removed. A provision would be added requiring a detention review hearing every seven days that a juvenile is in detention.

#### *First Appearance and Immediate Intervention*

Effective January 1, 2017, the statute governing the first appearance would require that a juvenile appearing without an attorney be informed of the right to be offered an immediate intervention.

#### *Immediate Intervention*

Effective January 1, 2017, the statute governing immediate intervention programs would be amended to replace a provision allowing a county or district attorney to adopt a policy and establish guidelines for an immediate intervention program with a requirement that the director of juvenile intake and assessment services collaborate with the county or district attorney to adopt a policy and establish guidelines for an immediate intervention process, which may include information on offenders beyond those required by the statute. The court, county or district attorney, director, and



other relevant individuals or organizations would be required to develop local programs for certain purposes. (Currently, the court, county or district attorney, and director are allowed to develop local programs at their discretion.) The list of purposes for such programs would be amended to include direct referral of cases to immediate intervention, rather than to certain other programs; require juvenile intake and assessment services, rather than the county or district attorney, to adopt policies and guidelines for issuance of summons; allow immediate intervention program providers to directly purchase services for the juvenile and juvenile's family; and remove conditions on an intake and assessment worker's release of a juvenile prior to a detention hearing.

The statute would be further amended by removing limitations on eligibility for immediate intervention programs and a provision regarding a stipulation of facts. A provision would be added requiring a juvenile who goes through the intake and assessment process be offered the opportunity to participate in an immediate intervention program and avoid prosecution if the juvenile is charged with a misdemeanor or unlawful voluntary sexual relations, has no prior adjudications, and the offer is made pursuant to guidelines developed under this statute. A juvenile with fewer than two prior adjudications could also participate in such a program if referred for immediate intervention by the county or district attorney after review of the case to determine if the case should be referred for immediate intervention or designation for alternative means of adjudication. The county or district attorney would be required to consider any recommendation of a juvenile intake and assessment worker, court services officer, or community corrections officer.

A juvenile referred to immediate intervention would be required to work with court services, community corrections, juvenile intake and assessment services, or any other designated entity to develop an immediate intervention plan, which could be supervised or unsupervised. The plan could last no longer than four months from the date of referral, unless it requires completion of a mental health or substance

abuse program that extends longer, in which case the plan could be extended up to two additional months. Upon satisfactory compliance with the plan, the juvenile would be discharged and the charges dismissed at the end of the plan period. If the juvenile fails to satisfactorily comply with the plan, the case would be referred to a multidisciplinary team for review within seven days, and the team could revise and extend the plan or terminate the case as successful. The plan could be extended for no more than four additional months. If the juvenile fails to satisfactorily comply with the revised plan, the intake and assessment worker, court services officer, or community corrections officer overseeing the immediate intervention would refer the case to the county or district attorney for consideration.

*Prosecution as an Adult and Extended Juvenile Jurisdiction  
Prosecution*

The statute governing prosecution as an adult and extended juvenile jurisdiction would be amended to limit the option to designate a proceeding as an extended jurisdiction juvenile prosecution (EJJP) to cases involving an off-grid felony or a nondrug severity level 1 through 4 person felony. A provision placing the burden of proof on the juvenile to rebut EJJP in certain cases would be removed. The bill would replace a provision requiring good cause be shown to prosecute a juvenile as an adult with a requirement that the presumption that a juvenile is a juvenile be rebutted by a preponderance of the evidence. The age for adult prosecution of a juvenile would be raised from 12 to 14. The bill would remove existing presumptions that a juvenile is an adult based upon certain ages, crime severity levels, or other factors. Provisions allowing a juvenile to be bound over to the district judge where there is probable cause a felony has been committed and attaching authorization for prosecution as an adult to future prosecutions upon conviction would be removed.

The statute governing sentencing for EJJJ and options upon violation of a condition of a juvenile sentence under EJJJ would be amended to stay the execution of an adult criminal sentence on the condition the juvenile substantially comply with the juvenile sentence, rather than on the condition the juvenile not violate the juvenile sentence. A provision allowing revocation of the stay and juvenile sentence without notice would be removed, and a revocation hearing would be required in all cases.

Other statutes would be amended to reflect the changes to EJJJ.

#### *Post-Adjudication Orders and Hearings*

The statute governing post-adjudication orders and hearings would be amended to require the court to order one or more of the tools listed in the section unless information from a risk and needs assessment is available. The bill would add a provision giving the court authority to compel an assessment by the Secretary for Aging and Disability Services if a psychological or emotional evaluation of the juvenile indicates the juvenile requires acute inpatient mental health or substance abuse treatment, and the results of this assessment could inform a treatment and payment plan pursuant to the same eligibility process for non-court-involved youth. The bill would require a summary of the results from a risk and needs assessment be provided to the court post-adjudication and predisposition to be used to inform supervision levels. OJA and KDOC would be required to adopt a single, uniform risk and needs assessment to be used across the state. Cutoff scores to determine risk levels for juveniles would be established, and training on the assessment would be required for all administrators. The bill would require data to be collected on the results of the assessment to inform a validation study on the Kansas juvenile justice population to be conducted by June 30, 2020.

### *Sentencing Alternatives*

Effective July 1, 2017, the statute governing sentencing alternatives would be amended to require a sentencing alternative be imposed for a fixed period (which could not extend beyond the overall case length limit) pursuant to the placement matrix and the probation terms set by the bill. A provision regarding findings and determinations made pursuant to statutes repealed by the bill would be removed.

The sentencing alternatives would be amended as follows:

- The probation alternative would be made subject to the new probation provisions established by the bill and would require any juvenile placed on probation be supervised according to the results of the risk and needs assessment;
- The alternative to place the juvenile in the custody of a parent or other suitable person would be amended to exclude placement in a group home or other licensed child care facility;
- The alternative to place the child in the custody of the Secretary of Corrections for placement and permanency planning would be amended to sunset on July 1, 2018;
- The sanctions house alternative would be changed to commitment to detention for no longer than 30 days for a violation of a non-technical condition of sentence; and
- The alternative to commit the juvenile to confinement in a juvenile correctional facility would be amended to require the judge to make a written finding that the juvenile poses a significant risk of harm to another or damage to property. The juvenile would have to otherwise be eligible for

commitment under the placement matrix, and an order for a period of conditional release would be changed from mandatory to the court's discretion. Conditional release would be limited to a maximum of six months and would be subject to graduated responses. A provision requiring a permanency hearing within seven days after the juvenile's release would be removed.

The required use of a risk assessment tool would be expanded to all sentencing, and the bill would require the results of the assessment be used to inform orders made pursuant to the placement matrix or the new probation provisions. Provisions related to commitment to a sanctions house would be changed to provisions for detention. Commitment to detention would be limited to violation of sentencing conditions where all other alternatives have been exhausted, and the court would have to find the juvenile poses a significant risk of harm to another or damage to property, is charged with a new felony offense, or violates conditional release. Detention would not be permitted for solely technical violations of probation, contempt, a violation of a valid court order, to protect from self-harm, or due to any state or county failure to find adequate alternatives. Cumulative detention use would be limited to a maximum of 30 days and the overall case length, pursuant to the new provisions of the bill set forth above.

Provisions would be added to this section allowing the court to order a short-term alternative placement of a juvenile in an emergency shelter, therapeutic foster home, or community integration program if the juvenile has been adjudicated of aggravated human trafficking, a sex offense, commercial sexual exploitation of a child, sexual exploitation of a child, or an attempt of one of those offenses, and the victim resides in the same home as the juvenile; a community supervision officer in consultation with DCF determines an adequate safety plan cannot be developed to keep the juvenile in the same home; and there are no relevant child in need of care issues that would permit a case to be filed under

the CINC Code. The presumptive term of commitment would not extend beyond three months and the overall case length, but could be modified. If a child is placed outside the child's home under this provision, and no reintegration plan is made a part of the hearing records, a written reintegration plan would have to be prepared and submitted to the court within 15 days of the initial order of the court.

Finally, a provision would be added to this section requiring the court to calculate the overall case length limit and enter this limit into the written record when one or more of the sentencing options in the section are imposed.

#### *Modification of a Sentence*

The statute governing modification of a sentence would be amended to make any modified sentence subject to the overall case length limit created by the bill. Provisions setting forth the procedure for a court to rescind an order granting custody to a parent would be replaced with a provision allowing the court, if it determines there is probable cause to believe that the juvenile is a child in need of care, to refer the matter to the county or district attorney to file a child in need of care petition and to refer the family to DCF for services. A provision would be added allowing the court to authorize participation in a community integration program, if it finds the juvenile needs a place to live but there is not probable cause that the child is a child in need of care, or if the child is emancipated or over the age of 17.

#### *Placement Matrix*

Effective July 1, 2017, the placement matrix for commitment to a juvenile correctional facility would be amended to require a written finding before such placement that the juvenile poses a significant risk of harm to another or damage to property. A departure sentence provision would be removed, and the term of commitment would be subject to the overall case length limit.

The serious offender I category would be amended to remove nondrug severity level 5 and 6 person felonies and drug severity level 1 through 3 felonies and place these into a new serious offender II category, for which an offender could be committed for a term of 9 to 18 months with no aftercare.

The existing serious offender II category would become serious offender III, and the permissible term of commitment for this category would be lowered from 9-18 months to 6-12 months. Aftercare would be removed and commitment would be allowed only if a juvenile is assessed as high-risk.

The existing serious offender III category would become serious offender IV, and the permissible term of commitment would be lowered from 9-18 months to 6-12 months. Aftercare and departure provisions would be removed and a commitment would be allowed only if a juvenile is assessed as high-risk.

The chronic offender I category would be amended to lower the maximum permissible term from 18 to 12 months, remove aftercare and departure provisions, and allow commitment only if a juvenile is assessed as high-risk.

The chronic offender II and III categories would be removed.

Conditional release provisions would be amended to allow the court to order a period of conditional release limited to six months and subject to graduated responses, with a presumption upon release that the juvenile shall be returned home, unless the case plan recommends a different reentry plan. The bill would remove commitment to a juvenile correctional facility as an option upon violation of the requirements of conditional release and would change a reference to "sanctions" to "detention."

The bill would remove the definition of "placement failure" and a provision allowing a juvenile committed to a juvenile correctional facility to be adjudicated to a consecutive

term of imprisonment for an offense committed while in the facility.

A provision requiring the Secretary to work with the community would be broadened in scope from community placements for chronic offender III to development of evidence-based practices and programs to ensure the juvenile correctional facility is not frequently utilized.

#### *Probation or Placement Condition Violations*

Effective July 1, 2017, the statute governing the procedure upon violation of condition of probation or placement would be amended to require the county or district attorney, the current custodian of the juvenile offender, or the victim of the offense to file a report with the assigned community supervision officer or the current custodian of the juvenile offender, rather than with the court. The community supervision officer or current custodian would then review the report before filing to determine whether it is eligible for review by the court. The statute would be amended to reflect the requirement for probable cause to believe the juvenile poses a significant risk of physical harm to another or damage to property before a warrant could be issued. Some references to “placement” would be removed. The bill’s overall case length limit and limits on court review for technical violations would be incorporated into the state. A procedure for removing a juvenile from the custody of a parent would be removed.

#### *Departure Sentencing*

Effective July 1, 2017, the statute governing departure sentence procedure would be amended to limit its application to juveniles sentenced to a juvenile correctional facility as a violent offender and to incorporate by reference the departure sentence limits and provisions contained in the new law regarding overall case length limits and the amendments to the sentencing placement matrix. Accordingly, the bill would



remove the existing departure limits contained in this section. The bill would require the judge to enter the substantial and compelling reasons for a departure into the written record.

#### *Commitment to a JCF*

Effective January 1, 2017, the statute governing commitment to a JCF would be amended to add a provision requiring a case plan be developed, with input from the juvenile and the juvenile's family, for every juvenile sentenced to a JCF. For a juvenile committed for violating a condition of sentence, the case plan developed with the community supervision officer would be revised to reflect the new disposition. DCF, the local school district in which the juvenile offender will be residing, and community supervision officers would be allowed to participate in the development or revision of the case plan, when appropriate, and the case plan would incorporate the results of the risk and needs assessment and the program and education to complete while in custody. The case plan would have to clearly define the role of each person or agency working with the juvenile. The case plan would include a reentry section, detailing services, education, supervision, or any other elements necessary for a successful transition, as well as information on reintegration of the juvenile into the juvenile's family or, if reintegration is not viable, another viable release option. For a juvenile to be placed on conditional release, the case plan would be developed with the community supervision officer.

#### *Conditional Release Procedure*

Effective July 1, 2017, the statute governing conditional release procedure would be amended to allow the person in charge of a JCF to include a specified period of time to complete conditional release, if such release has previously been ordered. A reference to "case management officer" would be changed to "supervision officer." A court reviewing the notice of a proposed conditional release would be required to review the terms of any case plan. A provision

applicable to acts committed before July 1, 1999, would be removed.

#### *Failure to Obey Conditions of Release*

Effective July 1, 2017, the statute governing failure to obey conditions of release would be amended to incorporate the new prohibition on court consideration of such failure until a third or subsequent failure. The bill would require referral from the supervising officer before the county or district attorney could file a report with the court, and would add a requirement that the juvenile's history of violations be included in the report. The bill would remove the option for the court to order, upon finding a condition of release has been violated, that the juvenile be returned to the JCF to serve the incarceration and aftercare term.

#### *Discharge from Commitment*

Effective July 1, 2017, the statute governing discharge from commitment would be amended to incorporate the maximization of the overall case length limit as a condition requiring discharge of the juvenile by the Secretary.

#### *Notification of Pending Release*

Effective July 1, 2017, the statute governing notification of pending release and the procedure by which a county attorney, district attorney, or the court may move to determine if the juvenile should continue to be retained would be amended; it would change the determination to be made at such hearing from whether the juvenile should be retained to whether the juvenile should be placed on conditional release, if not previously ordered by the court. If the court orders a period of conditional release following the hearing, the supervision of the juvenile would be limited to six months of conditional release and subject to the overall case length limit. A definition of "maximum term of imprisonment" would

be removed, as it would not be needed under the new procedures.

#### *Alternative Means of Adjudication*

Effective July 1, 2017, the statute governing alternative means of adjudication would be amended to change the eligibility for adjudication under the section from a juvenile committing a misdemeanor to a juvenile with fewer than two adjudications. The term “diversion” would be changed to “immediate intervention,” and a provision would be added allowing a juvenile designated for alternative adjudication to be referred to an immediate intervention program. The bill would remove a provision allowing the court in an alternative adjudication proceeding to remove a juvenile from the home and place the child in the temporary custody of the Secretary for Children and Families or any person, other than the child’s parent, willing to accept temporary custody. A reference to “placement failure” would be removed from a provision regarding use of the adjudication on a subsequent offense.

#### *Further Juvenile Code Statutes Repealed*

Effective July 1, 2017, the bill would repeal a statute allowing removal of a juvenile from custody of a parent. Effective July 1, 2018, the bill would repeal a statute governing placement and permanency planning for a juvenile placed in the custody of the Commissioner of Juvenile Justice. *[Note: the position of Commissioner of Juvenile Justice was eliminated and its duties transferred to the Secretary of Corrections by 2013 Executive Reorganization Order 42.]*

#### **Schools**

Effective July 1, 2017, the School Safety and Security Act would be amended to require boards of education to include in their annual school safety and security reports

information regarding arrests and referrals to law enforcement or juvenile intake and assessment services made in connection to criminal acts the school is required to report under continuing law. The bill would also add a requirement that the data in the report include an analysis according to race, gender, and any other relevant information.

The bill would further amend the Act to direct the State Board of Education (SBOE) to require that the superintendent of schools (or designee) in each school district develop, approve, and submit to the SBOE a memorandum of understanding developed in collaboration with relevant stakeholders (including law enforcement agencies, the courts, and the county and district attorneys), establishing clear guidelines for referral of school-based behaviors to law enforcement or the juvenile justice system, with the goal of reducing such referrals and protecting public safety. The SBOE would be required to provide an annual report to KDOC and OJA compiling school district compliance and summarizing the content of each memorandum of understanding.

Statutory provisions governing reporting of certain student behavior to law enforcement, reporting of certain criminal behavior on school property or at a school-supervised activity, powers of campus police officers, and reporting of inexcusable absences from school would be amended to make such provisions subject to the terms of the memorandum of understanding.

### ***Juvenile Intake and Assessment***

Effective January 1, 2017, the statute governing the juvenile intake and assessment system would be amended to require a juvenile intake and assessment worker (worker) to make both release and referral determinations once a juvenile is taken into custody. The bill would specify that the worker may collect required information either in person or via two-way audio or audio-visual communication, would clarify

information collected would be the results from a standardized detention risk assessment tool rather than “a standardized risk assessment tool,” and would add “if detention is being considered for the juvenile.” The bill would remove a provision requiring the worker to believe release of the child to a parent’s, legal guardian’s, or other appropriate adult’s custody would be in the best interests of the child and not be harmful before making such release. The bill would specify additional non-exclusive conditions that could be imposed on conditional release and would change an existing condition from “inpatient treatment” to “outpatient treatment.” Stay in a shelter facility or a licensed attendant care center would be limited to a maximum of 72 hours.

The bill would add immediate intervention programs to the possible referrals by the worker and would specify in the continuing option to refer to the county or district attorney that such referral may be made with or without a recommendation for consideration for alternative adjudication or immediate intervention.

The bill would replace a provision allowing the Commissioner of Juvenile Justice to adopt rules and regulations regarding local creation of risk assessment tools with a provision requiring the Secretary, in conjunction with OJA, to develop, implement, and validate a statewide detention risk assessment tool. The assessment would be required for each youth under consideration for detention and could be conducted only by a trained worker. The Secretary and OJA would be required to establish cutoff scores to determine eligibility for placement in a JDF or for referral to a community-based alternative to detention. Data regarding the use of the tool would have to be collected and reported. The bill would require the assessment to include an override function that could be approved by the court for use under certain circumstances so that the worker or the court could override the assessment score to direct placement in a short-term shelter facility, a community-based alternative to detention, or a JDF. The override would be required to be documented, include a written explanation, and receive

approval from the director of the intake and assessment center or the court. If a juvenile is eligible for detention or referral to a community-based alternative to detention, the person with detention authority would retain discretion to release the juvenile if other, less restrictive measures would be adequate.

The bill would require every worker be trained in evidence-based practices, including risk and needs assessment, individualized diversions, graduated responses, family engagement, trauma-informed care, substance abuse, mental health, and special education.

### ***Juvenile Corrections Advisory Boards***

The statute governing the membership of juvenile corrections advisory boards would be amended to add to the membership a juvenile defense representative, who would be required to be a practicing juvenile defense attorney in the judicial district and be selected by the judge of the district court who is assigned the juvenile court docket. The requirements of the boards would be amended to add adherence to the goals of the Juvenile Code and coordination with the Oversight Committee created by the bill.

### ***Technical Amendments***

Throughout the bill, technical amendments would be made to update or correct statutory cross-references, remove irrelevant dates, and update references to reflect the assumption of the duties of the JJA and the Commissioner of Juvenile Justice by KDOC and the Secretary of Corrections, pursuant to 2013 Executive Reorganization Order 42.

### **Background**

In 2015, Governor Brownback, Chief Justice Nuss, the Senate President, the Senate Minority Leader, the Speaker of

House, and the House Minority Leader appointed 17 representatives from all parts of the Kansas juvenile justice system, as well as legislators from both parties and chambers, to the Kansas Juvenile Justice Workgroup and charged the Workgroup with developing policy recommendations to advance three goals: promote public safety and hold juvenile offenders accountable; control taxpayer costs; and improve outcomes for youth, families, and communities in Kansas. The Public Safety Performance Project of The Pew Charitable Trusts and the Crime and Justice Institute at Community Resources for Justice provided technical assistance to the Workgroup.

The Workgroup met throughout the second half of 2015, analyzing the Kansas juvenile justice system; reviewing key data from OJA, DCF, and KDOC; and gathering input from stakeholders, including law enforcement, crime victims, judges, county and district attorneys, and service providers. The Workgroup also reviewed current research on reducing recidivism and effective policies and practices from other jurisdictions.

In November 2015, the Workgroup issued its final report, including 40 policy recommendations. The final report and a summary may be found on the KDOC website. The policy recommendations in the report served as the basis for SB 367, as introduced.

The bill was introduced by the Senate Committee on Corrections at the request of Senator Smith, who served on the Juvenile Justice Workgroup.

At the hearing before the Senate Committee, several members of the Workgroup testified in support of the bill. These members included the director of Juvenile Community Corrections in Cowley County, a former Secretary of Corrections, the director of Johnson County Department of Corrections, a district court judge and district magistrate judge who hear juvenile cases, a juvenile defense attorney, the Director of Community Based Services at KDOC, and the

Deputy Secretary for Juvenile Services at KDOC. Additional proponents who testified included representatives of Keys for Networking, National Alliance on Mental Illness, Kansas Applesseed Center for Law and Justice, Kansas Association of Community Action Programs, Kansas Community Corrections Association, and KDOC.

Members of the Workgroup submitting written testimony supporting the bill included Senator Smith and an assistant county attorney who prosecutes juveniles. Additional written proponent testimony was submitted by representatives of the American Civil Liberties Union of Kansas, Association of Community Mental Health Centers of Kansas, Kansas Association of Criminal Defense Lawyers, Kansas Action for Children, Kansas Big Brothers and Big Sisters, Kansas Center for Economic Growth, Kansans United for Youth Justice, National Juvenile Defender Center, as well as by a Kentucky county attorney, a South Dakota sheriff, a South Dakota judge, a Shawnee County juvenile defender, a national crime victim advocate, and state senators from South Dakota and Kentucky.

Conferees testifying in opposition to the bill included the Johnson County District Attorney on behalf of his office and on behalf of the Kansas County and District Attorneys Association, a representative of the Sedgwick County District Attorney's Office, a district judge on behalf of the Kansas District Judges Association, the director of the Southwest Regional Juvenile Detention Center, the executive director of The Villages, Inc., a representative of Kansas Association of Court Services Officers, and a citizen.

Written testimony opposing the bill was submitted by the county or district attorneys (or representatives of their offices) from the following counties: Anderson, Douglas, Finney, Leavenworth, Osage, and Shawnee.

Members of the Workgroup testifying as neutral conferees included a representative of the Kansas Association of Chiefs of Police, Kansas Peace Officers



Association, and Kansas Sheriffs' Association, as well as a representative of the OJA. Additional neutral conferees included a district court judge who hears juvenile cases, representatives of the Children's Alliance and DCF, and a representative of the Kansas Association of School Boards, Kansas School Superintendents Association, and United School Administrators of Kansas. Written neutral testimony was received from a representative of the Kansas Association of Addiction Professionals.

The Senate Committee adopted amendments:

- Removing a prohibition added by the bill on court services supervision of a child in need of care in the custody of a person other than a parent;
- Creating statutory speedy trial and preliminary hearing rights for juvenile offenders;
- Adding a community corrections agency representative to the Oversight Committee and changing from a state to a local law enforcement agency representative;
- Allowing the local school district to participate in case planning, rather than the Department of Education;
- Delaying or further delaying the effective date of various new sections and amendments;
- Removing overall case length limits for certain felonies;
- Adding the possibility of damage to property by a juvenile as a factor to consider in various circumstances;

- Requiring KDOC and the Oversight Committee to explore methods of exchanging confidential data within the juvenile system;
- Requiring a notice to appear and complaint be provided in a single citation;
- Restoring existing terms and provisions for violent offender I and II that would have been removed or amended by the bill as introduced;
- Creating a new category of serious offender II and adjusting the other categories accordingly;
- Adjusting the clinician requirement for multidisciplinary teams;
- Removing a provision in the bill as introduced providing oversight of attorneys representing juveniles;
- Restoring language related to youth residential facilities in the Juvenile Code;
- Adjusting the ability of a court to extend probation for completion of an evidence-based program;
- Removing limits on cumulative detention for certain offense severity levels that would have been established by the bill as introduced;
- Requiring certain prioritization of funds related to the Kansas Juvenile Justice Improvement Fund, specifying the baseline related to the Fund, and requiring monitoring of the prioritization plan by the Oversight Committee; and
- Requiring sight and sound separation in youth residential facilities between juveniles with open cases and other children.

The Senate Committee of the Whole adopted amendments delaying the effective date of the case, probation, and detention length limits until July 1, 2017, and reinstating the option for EJJJ (removed by the bill as introduced), with some modifications to eligibility, burden of proof, and procedure.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, OJA estimates additional expenditures of \$402,400 from the State General Fund (SGF), including funds for 3.00 additional full-time-equivalent (FTE) employees, would be required to implement the bill in FY 2017. This amount would include \$207,400 for salaries and wages, \$85,000 to develop and use a risk-based assessment tool, and \$110,000 for training expenses. Additionally, the bill would decrease some duties currently assumed by some Judicial Branch employees but increase the duties performed by other Judicial Branch employees.

DCF indicates it cannot estimate how many additional children would come into custody. The annual cost for each child in foster care is \$25,000, including \$21,400 from the SGF.

The Attorney General would need additional expenditures of \$2,500 from the SGF in FY 2017 for operating expenditures for supplies and travel to comply with the bill.

The Kansas Department of Education would require additional SGF expenditures of \$90,102 in FY 2017 to implement the bill, including \$81,602 for an additional 1.00 FTE position to coordinate the bill's provisions and \$8,500 for other operating expenditures.

The Kansas Sentencing Commission states the bill would have no effect on adult prison admissions or the Commission's workload.

KDOC states the bill would have no fiscal effect on agency operations. The Division of the Budget estimates there would be a fiscal effect on KDOC due to the provisions establishing the Kansas Juvenile Justice Improvement Fund, which would be administered by KDOC, but the Division cannot estimate a fiscal effect at this time. The Division of the Budget requested fiscal effect information from other state agencies and will issue a revised fiscal note to reflect any additional information that is received.

Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.

The League of Kansas Municipalities and the Kansas Association of Counties indicate enactment of the bill could create additional expenses due to new duties for county attorneys and local law enforcement officials, but they cannot estimate a fiscal effect at this time.