

House Corrections and Juvenile Justice Committee
January 25, 2018
House Bill 2453

Testimony of the
Kansas Association of Criminal Defense Lawyers
Opponent

Dear Chairman Jennings and Members of the Committee:

KACDL is dedicated to justice and due process for those accused of crimes, including juveniles. KACDL opposes House Bill 2453 because it creates new payment obligations for minors. In the event the Legislature is dead set on adding fees and costs, it should provide adequate safeguards for waiving the same.

Brief background

It appears immediate intervention programs were codified in 2006 in K.S.A. 38-2346. K.S.A. 38-2302(j) defines “immediate intervention” as “all programs or practices developed by the county to hold juvenile offenders accountable while allowing such offenders to be diverted from formal court processing.” Until 2016, K.S.A. 38-2346 itself did not mention whether there were fees or costs to participate in a program. In 2016, the Legislature added that “[a] juvenile who is eligible for an immediate intervention shall not be denied participation in such a program or terminated unsuccessfully due to an inability to pay fees or other associated costs.”

What HB 2453 would do

For what appears to be the first time since the inception of K.S.A. 38-2346, there would be an application fee to participate. (Admittedly, I do not know whether some entity was allowed to charge an application fee under local rules at some point in the past.) Furthermore, it creates for the first time a specific mention in K.S.A. 38-2346 of an obligation to pay for program costs. Specifically, HB 2453 would permit an unspecified entity to use an unspecified process to allow a juvenile to pay a portion of the fee and unspecified program participation costs if he/she is unable to pay in full – or allow the juvenile to participate in community service at an unspecified hourly rate/unspecified formula, or a combination of the two.

The problems/concerns HB 2453 raises

- 1) It appears this is the first time that a juvenile would be specifically obligated by K.S.A. 38-2346 to pay in part or in whole for the program costs. The fiscal note mentions that programs reduce recidivism and offenders would “have a stake in

their treatment with the fee.” These are juveniles we are talking about – who should be in school, who may not be able to legally work, who have reporting and other requirements in order to be in the program, who may have transportation problems in getting to work/additional service, etc. – it is unnecessary to force kids (and, by association, their parents) to have a money stake.

- 2) It does not indicate who determines if the fee and costs will be reduced and/or paid through service – it also does not indicate how that determination is made, or when. It does not indicate whether a juvenile could be kept in the program longer because of nonpayment (i.e. similar to how people’s probation is extended to give more time for them to pay costs and fees).
- 3) Immediate intervention programs are designed to save resources in both the short and long run (exs.: short term – by not having a case proceed through the judicial system, and long term – by not having the individual and societal costs that come from a criminal conviction), while also decreasing recidivism. HB 2453 would have minors pay to participate in something designed to be less taxing on the system than if they (the minors) were adjudicated, placed on probation, and marked by a criminal adjudication. This seems inconsistent with the concept of diversion programs, i.e. setting up the process to give juveniles every chance to succeed and redirecting resources to where they can make the most impact at that point, etc.
- 4) In the event the Legislature is dead set on HB 2453’s concept, it does not provide a way for costs to be waived in full. In this way it is unlike another fee that specifically refers to K.S.A. 38-2346, i.e. the forensic lab fee in K.S.A. 28-176. K.S.A. 28-176 provides that, based on a finding of indigency, the court can waive the lab fee for a juvenile diverted under K.S.A. 38-2346. As another example, the Legislature has provided for mandatory drug treatment for certain drug offenders, commonly known as Senate Bill 123 treatment. K.S.A. 75-52,144(d) provides that drug abuse assessments will be paid for by the Sentencing Commission. That said, it also provides that the court can determine “the extent, if any, that such person is able to pay for such assessment and treatment.” But payment (or community service) is not required. See also K.S.A. 22-4529 (allows a court to waive in part or in whole the \$100 BIDS application fee if the court finds payment would constitute a “manifest hardship”); K.S.A. 75-724(c) (court can lessen or fully waive the DNA database fee with an indigency finding). HB 2453 does not specifically permit a full waiver of the application fee or other costs.

Thank you for your consideration,
Jennifer Roth
co-chair, KACDL Legislative Committee
jrothlegislative@gmail.com
785.550.5365