



CITY OF TOPEKA

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To: Senate Committee on Judiciary

From: Amanda L. Stanley, City of Topeka City Attorney

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Re: Testimony in Opposition of SB 448

I would like to thank Chairwoman Warren and the Committee for allowing the City of Topeka the opportunity to provide opposition testimony on SB 448.

Cities are really good at solving problems and filling voids in service. I would argue as the one entity of government that solely exists to provide the services that our community demands, we are probably the best at void filling even when the proposed solution does not fix the root of the problem; it just treats the symptoms.

There are times a city cannot solve the real issue because there are some fundamental core services of government better suited to the State and their administrative arm of county government. SB 448 is the perfect example of that. I would guess the origins of this bill are similar to debates we have had in our community about increasing mental health issues, drug addictions, homelessness, chronic underfunding of mental health treatment, lack of understanding of how hard it is for someone to be involuntarily committed, the limits of the constitution, and an overburdened court system where cases are not resolved instantaneously. As city attorney, I have been asked why I can't just hold people in jail or civilly commit them when they are upsetting neighborhoods, not because those people are cruel, but they simply don't understand the limits of government.

While municipal courts may have started predominately as traffic courts, over time in large cities, significantly more misdemeanors of serious nature are handled through municipal court as a matter of efficiency so the district and county attorney's office can focus on homicides, major felonies, and misdemeanors that do not fall within city limits. Currently, K.S.A. 22-3302 allows for competency to be determined by a jury, not just a district court judge. Municipal courts; however, are not courts of record and only a bench trial is allowed because there is no right to a jury.

An appeal of a municipal court conviction is a de novo appeal in district court because it is not a court of record. It is as if the municipal court trial never occurred; it starts all over from the beginning. Whether a municipal court is a court of record or not, an individual must be competent to stand trial in order to not violate due process rights. Prior to the introduction of this bill, municipal court judges had no statutory authority under the competency statutes K.S.A. 22-3302 et seq. to address the competency of a defendant to stand trial. In Shawnee County, we have a good working relationship with our district attorney and we have an established process in how we handle those cases. If the municipal court judge has concerns over competency, our prosecution office dismisses the case and notifies the district attorney's office. If the case

is a criminal offense under state law, our officers are to file a charging affidavit with the district attorney who considers the case for charging. The district attorney understands that the case is one that is being sent because the City is unable to address it because there are concerns of competency issues. That is a legally appropriate way to address competency issues.

In an effort to give municipal court judges a tool to allow them to retain a case while competency is evaluated, SB 448 creates numerous questions; it will have a huge fiscal impact for cities, could result in individuals spending more time held in jail, and ultimately results in cities being right back at the current system only with more time delayed and more money paid later.

While fundamentally we question the wisdom of courts not of record making findings on competency, which will likely simply have to be redone at a de novo trial on appeal, there are issues with how the bill is drafted.

In New Section One, unlike the district court statute which provides a definitive 60 day timeframe for which the competency evaluation must be completed and certified back to the Court, New Section One has no timeline. This seems problematic for due process when read in conjunction with Section 2 which makes provisions for reimbursement of the county for time the individual is in custody awaiting examination or evaluation. Regardless of the determination on competency, the city shall be required to bear the costs of competency examinations. In a city of our size, those could be substantial depending on who we could find to do the evaluations and what kind of rate could be negotiated. While not explicitly mentioned like it is in state law, municipal court judges would have to consider defense motions petitioning for a competency evaluation in order to satisfy constitutional due process which could add to the costs.

Under the bill, if the accused is found incompetent to stand trial, the city attorney is to request the district or county attorney to review the complaint and, only once the case is accepted and filed in district court, is the municipal court to dismiss the criminal charges. This would result in a time period of the individual being simultaneously charged in two jurisdictions for the same crime, which is a constitutional issue. We assume a charging affidavit from the officer will still be required to file the case but the language in the bill is unclear. The language at a minimum would need to be written that the City is to dismiss the case and then refer it to the district or county attorney. Once the case is filed, the bill orders the district court to proceed in accordance with K.S.A. 22-3302; however, it is unclear to us how that is to occur. Is the prosecutor to immediately file a motion requesting a new competency evaluation? It is a new case so the district court could not rely on a competency evaluation from a different jurisdiction? Nor could the district court judge order an evaluation on its own without personal knowledge and observation. How is the district court to know why the State filed the case? Regardless, another competency evaluation will need to be ordered resulting in public funds paying for two evaluations instead of one. Also if the individual is in jail awaiting a competency evaluation and is found incompetent, how can the individual continue to be held? The municipal court loses jurisdiction and would need to release the individual. If the State files the case, do the deadlines in K.S.A. 22-3302 and 22-3303 automatically kick in or not until a petition is filed?

If the State declines the referral under the bill, the municipal court is to dismiss the case. Municipal courts cannot cure competency nor should they be able to cure competency. That is a more appropriate function of the State. Ultimately, that results in municipal courts being in the same position they are in today, dismissing cases for lack of jurisdiction due to competency. The bill does not order the district or county attorney file charges on the case. Nor should it. That would interfere with prosecutorial discretion.

The system in place currently under K.S.A. 22-3302 is an appropriate and constitutionally legal path to determine whether a defendant is competent to stand for trial. This amendment draws multiple questions into the legality of the process, as well as a huge increase in costs to municipalities that is unnecessary and ultimately unfair to the constitutional protections of citizens. It should not be allowed.

Ultimately this legislation results in more questions than answers. The State would be better served to invest more money in solving the root of the increasing mental health problems in our community.