

SESSION OF 2014

SUPPLEMENTAL NOTE ON SENATE BILL NO. 270

As Amended by House Committee on Judiciary

Brief*

SB 270 would amend the code of criminal procedure to prohibit the admission of expert evidence relating to a defendant's mental status through an expert who has examined the defendant unless the defendant provides timely written notice to the prosecution of the intent to introduce such evidence, files this notice with the court, and discloses to the prosecution the results and reports of any mental status examination conducted by the expert. By providing such notice, the defendant would submit and consent to further court orders requiring mental examination, and the court would be required to order an additional expert examination of the defendant upon the prosecution's motion.

The bill would add the following requirements to apply to any examination conducted under this section, whether or not the defendant consents to the examination:

- Any examination ordered that will be used as evidence by either party would be required to be filed with the court under seal within a deadline set by the court, which could be extended for good cause shown;
- No statement made by the defendant in the course of the examination, no expert testimony based on the statement, and no fruits of the statement would be allowed to be admitted as evidence against the defendant in any criminal proceeding except

*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>

regarding the issue of the defendant's mental status;

- The prosecution would not be permitted to admit any evidence obtained pursuant to this section unless the defendant first admits mental status evidence; and
- Evidence of any notice filed under this section which is later withdrawn would not be admissible in any civil or criminal proceeding against the person giving notice.

The bill would clarify that expert evidence relating to a defendant's mental status is not admissible unless the defendant complies with the requirements of the section. The bill would define "mental status" as including, but not limited to, mental disease or defect, voluntary intoxication, compulsion, use of force, or any other mental status of the defendant bearing on the issue of intent or, in a capital or off-grid person felony case, the issue of punishment. Finally, the bill would direct that its provisions be construed and applied retroactively.

Background

SB 270 was introduced by the Senate Committee on Judiciary at the request of the Attorney General's Office. In the Senate Committee, Attorney General Schmidt and another representative of his office testified in support of the bill and offered language for a clarifying amendment. Written testimony supporting the bill was received from the Kansas County and District Attorneys Association. Representatives of the Kansas Association of Criminal Defense Lawyers and the National Alliance on Mental Illness – Kansas (NAMI Kansas) testified in opposition to the bill.

The Senate Committee adopted the clarifying amendment offered by the Attorney General and additionally

amended the bill to further clarify that the procedures allowing the prosecution to move for an additional expert examination of the defendant are applicable only where the defendant has provided notice of intent to introduce expert evidence relating to the defendant's mental status through an expert who has examined the defendant.

In the House Committee on Judiciary, Attorney General Schmidt, another representative of his office, and a representative of the Kansas County and District Attorneys Association testified in support of the bill. A representative of the Kansas Association of Criminal Defense Lawyers testified in opposition to the bill. A representative of the Kansas Mental Health Coalition provided written testimony opposing the bill.

The House Committee amended the bill to add procedural requirements for examinations conducted under the statute.

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates the bill could increase the number of motions and issues to be decided in district courts and on appeal. However, until the courts have operated with the provisions of the bill in place, an accurate estimate of the fiscal effect on the Judicial Branch cannot be given. The Attorney General's Office indicates Kansas counties would incur additional costs to obtain expert examinations in mental status defense cases, but the extent of these costs is not known. The Kansas Sentencing Commission indicates the bill would have no effect on prison beds or admissions or the workload of the Commission. The Board of Indigents' Defense Services indicates the bill would have no fiscal effect on its operations.