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MEMORANDUM

To: House Committee on Judiciary

From: Office of Revisor of Statutes

Date: February 17, 2022

Subject: Bill Brief on HB 2697

HB 2697 makes changes to the process for evaluating and treating people who are undergoing evaluation for competency to stand trial and allows such evaluation and treatment at various facilities.

Section 1 amends K.S.A. 22-3302, which is the statute that governs proceedings to determine a defendant's competency to stand trial. This statute is amended to provide that an evaluation may be conducted in person or by use of available electronic means while the defendant is in jail, at a secure location or on pretrial release. Current law provides that a commitment to an institution or facility for evaluation shall not exceed 60 days. This bill provides that prior to the expiration of that 60-day period, the professional approved by the court to examine the defendant or the chief medical officer or head of a facility where a defendant is committed for inpatient examination shall certify whether the defendant is competent to stand trial.

Section 2 amends K.S.A. 22-3303, which is the statute that governs commitment of incompetent defendants. Under subsection (a), a defendant who is found to be incompetent shall be ordered for evaluation and treatment conducted on an inpatient or outpatient basis. Such evaluation may be ordered to be conducted on an outpatient basis in person or by use of available electronic means while the defendant is in jail, at any secure location, on pretrial release or in any other appropriate setting. For a defendant charged with a misdemeanor, outpatient evaluation and treatment shall be ordered to be conducted by an appropriate psychiatric or psychological clinic or facility, mental health center, county institution or facility or a private institution or facility. For a defendant charged with a felony, outpatient evaluation and treatment may be ordered to be conducted by any of the entities above or at an appropriate secure facility. For a

defendant charged with a felony, a commitment to the state security hospital or state hospital may be conducted on an inpatient basis or, if the defendant meets the screening criteria, on an outpatient basis. At the commencement of outpatient treatment, the institution conducting the treatment shall notify the county or district attorney for purposes of providing victim notification.

Subsection (b) provides that if a defendant is ordered to receive an evaluation and treatment on an outpatient basis by an appropriate, psychiatric or psychological clinic or facility, mental health center, county institution or facility or a private institution or facility, the chief medical officer shall certify to the court within 90 days whether the defendant has a substantial probability of attaining competency in the foreseeable future. The court shall set a hearing within 21 days after certification unless exceptional circumstances warrant delay. If such probability does exist, the court shall order the defendant to remain in jail or at a secure location, on pretrial release or at an appropriate setting until the defendant attains competency or for six months, whichever occurs first. If such probability does not exist, the court shall order the county or district attorney to commence involuntary commitment proceedings. The court shall issue an order for care and treatment within 21 days of receipt of the certification unless exceptional circumstances warrant delay. If a defendant who was found to have a substantial probability of attaining competency has not done so within six months, the court shall order the county or district attorney to commence involuntary commitment proceedings. The court shall issue an order for care and treatment within 21 days of receipt of the certification unless exceptional circumstances warrant delay.

Subsection (c) provides that if a defendant is ordered or met the criteria to receive an evaluation and treatment on an outpatient basis at the state security hospital or its agent or a state hospital or its agent, the chief medical officer shall certify to the court within 90 days whether the defendant has a substantial probability of attaining competency in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in jail or secure location, on pretrial release or at an appropriate setting until the defendant attains competency or for six months, whichever occurs first. If such probability does not exist, the court shall order the county or district attorney or the secretary for aging and disability services to commence involuntary commitment proceedings. The court shall issue an order for care and treatment within 21 days of receipt of the certification unless exceptional circumstances warrant delay. If a defendant who was found to have had a substantial probability of attaining competency to stand trial has not done so within six months, the court shall order the county or district attorney or the secretary for aging and disability services to commence involuntary commitment proceedings.

The court shall issue an order for care and treatment within 21 days of receipt of the certification unless exceptional circumstances warrant delay.

Subsection (d) provides that if a defendant is ordered or met criteria to receive an evaluation and treatment on an outpatient basis and the chief medical officer or head of an institution determines that the defendant's mental health condition or behaviors warrant terminating outpatient treatment and commencing inpatient treatment, the chief medical officer or head of an institution shall provide a report to the court within 10 days after outpatient treatment services are terminated and such report shall be provided to the chief medical officer at the state security hospital. The court shall issue any orders or warrants required to facilitate the sheriff taking the defendant into custody and transporting the defendant to the state security hospital or its agent or a state hospital or its agent. The chief medical officer shall submit a report as to whether the defendant has attained competency within 90 days of the defendant's admission for evaluation and treatment. The court, county or district attorney, defense counsel and the head of an institution where a defendant is receiving outpatient services shall provide documentation to the inpatient treatment center for managing admission.

Subsection (e) provides that if a defendant is charged with a felony, the court may order a defendant to receive inpatient evaluation and treatment at the state security hospital or its agent, a state hospital or its agent or a county or private institution or facility after considering the defendant's mental condition. The chief medical officer or head of the facility shall certify to the court within 90 days after inpatient treatment whether the defendant has a substantial probability of attaining competency in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in jail or at a secure location, on pretrial release or at an appropriate setting until the defendant attains competency or for six months, whichever occurs first. If such probability does not exist, the court shall order the county or district attorney or the secretary for aging and disability services to commence involuntary commitment proceedings. If a defendant who was found to have a substantial probability of attaining competency does not do so within six months, the court shall order the county or district attorney or the secretary for aging and disability services to commence involuntary commitment proceedings. The court shall issue an order for care and treatment within 21 days of receipt of the certification unless exceptional circumstances warrant delay.

In all cases of evaluation and treatment by one of the above entities, when reasonable grounds exist to believe a defendant who has been adjudged incompetent the court shall conduct a hearing to determine the person's present mental condition. If the court finds the defendant to

be competent, the proceedings shall resume. A defendant committed to a public institution who is sentenced for the crime may be credit with all or any part of the time during which the defendant was committed.

Finally, subsection (f) provides that psychotropic medications may be prescribed for a defendant who is ordered or has met the criteria to receive evaluation and treatment on an inpatient or outpatient basis. Psychotropic medications shall be prescribed, ordered and administered in conformity with accepted clinical practice. They shall be administered only on the written order of a physician or upon a verbal order noted in the defendant's medical records and subsequently signed by the physician. The attending physician shall regularly review the drug regimen of each defendant under the physician's care. When a defendant is receiving psychotropic medications that alter the defendant's mental state in such a way as to adversely affect the defendant's judgment or hamper the defendant in preparing for or participating in any hearing, for two days prior to and during the hearing, the facility shall not administer such medication or treatment unless it is necessary to sustain the defendant's life or to protect the defendant or others. Prior to the hearing, a report of all psychotropic medications that have been administered to the defendant and a copy of any written consent signed by the defendant shall be submitted to the court. Counsel for the defendant may preliminarily examine the physician regarding the medication within two days of the hearing. If the court determines that the medication or treatment has been administered that adversely affects the defendant's judgment or ability to prepare for or participate in the hearing, the court may grant the defendant a reasonable continuance to allow the defendant to better prepare. The court shall order the medication or treatment be discontinued until the conclusion of the hearing unless the court finds the medication is necessary to sustain the defendant's life or to protect the defendant or others. When a defendant who is receiving treatment under this section objects to taking any medication prescribed and if the defendant continues to object after full explanation of the benefits and risks of the medication, the medication may be administered over the defendant's objection. Such objection shall be recorded in the defendant's medical record and written notice shall be forwarded to the medical director of the treatment facility. Within five days after notice, the medical director shall issue a written decision concerning the administration of the medication, and such decision shall be placed in the defendant's medical record.

Section 3 amends K.S.A. 22-3305 to provide that when a hearing is requested on whether the defendant has been restored to competency, such request shall be filed within 14 days of completion of the notification from the treatment facility under subsection (a) or (b). The hearing

shall take place within 21 days after receipt of the hearing request unless the court finds that exceptional circumstances warrant delay of the hearing.

Section 4 amends K.S.A. 22-3428 to incorporate the amendments made in the other sections authorizing these evaluations and treatment to be conducted at a wider range of appropriate secure facilities.

Section 5 amends K.S.A. 22-3429. Under current law, if the defendant is convicted of a felony, the commitment shall be to the state security hospital or any suitable local mental health facility. If the defendant is convicted of a misdemeanor, the commitment shall be to a state hospital or any other suitable local mental health facility. If adequate private facilities are available and if the defendant is willing to assume the expense, then the commitment may be to a private hospital. This bill removes those current law provisions and provides that in all cases the trial judge may order the defendant committed to the state security hospital for mental examination, evaluation and report.