



Kansas Sheriffs' Association

PO Box 1122, Pittsburg, KS 66762

Phone: (620) 230-0864 ★ Fax: (620) 230-0866

Sheriff Sandy Horton, Ret., Executive Director

Sheriff John R. Fletcher, Ret., Deputy Director

www.kansassheriffs.org

Neutral Testimony to the House Judiciary Committee On HB2697

February 17, 2022

Chairman Patton and Committee Members:

The Kansas Sheriffs Association is not opposed to the concept of HB2697 nor the goal of the legislation to address the long waiting list for competency evaluation and treatment in Kansas. We appreciate the efforts of KDADS to find solutions to this long-standing problem. The waiting list creates long delays just waiting for evaluations. Then if the defendant is determined to be mentally incompetent another wait for treatment. During that waiting time the counties are absorbing considerable expenses for housing and care of the defendant. But worse, the defendant is delayed in receiving their day in court. At the end of December 2021, reports we receive from KDADS indicated there were 173 defendants on the wait list for competency evaluation or treatment. 55 (32%) of those were awaiting evaluation and 118 (68%) were awaiting treatment.

The reason we are testifying in a neutral position is that, in our opinion, there are significant amendments needed to the bill directly affecting the county jails. The remainder of our testimony will focus on those concerns.

Associated Costs

In current law most competency evaluation and treatment costs are borne by KDADS through their facilities and contractors. As the proposed changes transition to more use of local services, there needs to be clear statutory language directing the state will continue to bear those costs. Otherwise, the change is transferring budgetary demands from the state to the counties. This needs to be done in a way that works, not through a mythical pot of money like that created for reimbursing jails for the costs of housing sexually violent predators awaiting determination hearings.

Potential for Orders Directing Jails to Perform Things They Cannot Do

We strongly believe it is critical to include language in the bill that the sheriff or jail administrator must agree before evaluation and treatment may be ordered to be conducted in the jail. Some of our smaller jails will not have the appropriate facilities for evaluation or treatment and some will not have adequate mental health resources for evaluation and treatment in the jails. In some cases, they may be able to conduct the services for some defendants and not others due to capacity of services or the extent of psychological distress the defendant is in.

Evaluation and Treatment for Defendants Held on Misdemeanor Charges

The bill appears to transfer all responsibility for evaluation and treatment of defendants held on misdemeanor charges to local jails and resources. We believe this is problematic not only from the cost aspect, but also because the person may be in such a severe condition that treatment locally or in a jail is not advisable or possible. The level of mental health issues leading to incompetency is not dependent on the level of crime charges. Rather, it is dependent only on the defendant's psychological condition. Some defendant's facing misdemeanor charge will be in just as much need for more intense evaluation and treatment requiring state hospital care.

Assurance of Consistent and Quality Evaluation and Treatment

1. The current law (and existing language) refers to "appropriate psychiatric or psychological clinic or facility, mental health center, county institution or facility or a private institution or facility." [Emphasis added.] The amendments change the context of how that phrase is applied and we believe a description of what makes a facility "appropriate" needs to be included. For example, the facilities physical design being capable of providing space conducive to the evaluation or treatment services; level of licensing of the treatment providers; and requiring experience or training in the evaluation and treatment of competency.
2. We believe if, at any point of evaluation or competency, the condition of the inmate deteriorates to the point that proper care cannot be provided locally, whether in a jail or in another facility, that the court shall order the inmate to a State Hospital facility for treatment.

Clarity Concern

In several places in the bill, the phrase "county. . . institution or facility" is used. It appears to be aimed primarily at mental health facilities. But a jail is a county facility. We ask for an amendment using the term "jail" where it is appropriate to distinguish between jails and mental health facilities. [page 1, line 26; Page 3, lines 6, 20, 24, 37; page 4, lines 9; page 7, lines 4, 7; page 9, line 17]

Other Topics

Throughout the bill (example on page 1, line 10) the phrase "prosecuting attorney" is replaced with "county or district attorney." There are cases where competency cases do not involve a county or district attorney. For example, several state agencies have prosecutorial authority that would not involve a county or district attorney. Also, a person appealing a case from a municipal court to a district court would be prosecuted by a municipal prosecutor. We believe "prosecuting attorney" is the appropriate phrase, at least in the competency statutes of the bill.

If these concerns can be addressed to our satisfaction we would be in support of the bill.

Sandy Horton
Executive Director