

February 17, 2022

The Honorable Fred Patton, Chairperson
House Committee on Judiciary
Statehouse, Room 582-N
Topeka, Kansas 66612

Dear Representative Patton:

SUBJECT: Fiscal Note for HB 2697 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2697 is respectfully submitted to your committee.

HB 2697 would expand the list of providers that complete competency evaluations and restoration treatment beyond sending all defendants at the State Security Hospital at Larned State Hospital. The bill would allow providers to do evaluations and restoration treatment on an outpatient basis, if appropriate. The bill would authorize medication over objection under the same protections of the Care and Treatment Act, rather than requiring the defendant to be determined to be in a mental health crisis or be dually committed as a care and treatment case. The bill would address timelines and provide consistency with the proposed expanded availability of both in-patient and out-patient options for competency evaluations and restoration treatment.

The bill would give courts the option to order an evaluation by the State Security Hospital or by its agent, or a state hospital or its agent. The evaluation could be conducted either in person or by electronic means while the defendant is in jail or on pretrial release. Instead of appointing two physicians or psychologists to examine the defendant, the court would be limited to one physician or one psychologist. The selected professional would be required to certify to the court by the end of the 60-day evaluation period whether the defendant is competent to stand trial. The bill would permit courts to order incompetent defendants to be evaluated and treated either inpatient or outpatient by the State Security Hospital or its agent, any state hospital or its agent, or any appropriate institution. Other changes would include:

1. Evaluation and treatment could be done by electronic means if the defendant is in jail or on pretrial release;
2. Misdemeanor defendants could be ordered for outpatient treatment by any appropriate provider;

3. Felony defendants could be ordered for outpatient treatment by any appropriate provider, depending on whether they meet screening criteria;
4. 90 days after outpatient evaluation and treatment begins, the provider would certify to the court whether the defendant has a substantial probability of becoming competent in the foreseeable future, and the court would set a hearing within 21 days, absent exceptional circumstances, to determine competency;
5. Courts would be required to order prosecutors to initiate care and treatment cases and order care and treatment within a timeframe established;
6. If a defendant would be prescribed psychotropic medications during evaluation and treatment that adversely affect judgment or hamper preparation for defense, the medications would be stopped two days prior to and during hearing; and
7. The provider would be required to report to the court all psychotropic medications administered.

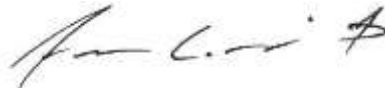
The passage of HB 2697 could have a fiscal effect on expenditures of the Judicial Branch. The bill's provisions would allow more providers in addition to the state security hospital to conduct evaluation exams on defendants to determine their competency to stand for trial. With more options available, this could lead to fewer delays in trials being held in the district courts. Nevertheless, until the courts have had an opportunity to operate under the provisions of HB 2697, an accurate estimate of the fiscal effect on expenditures by the Judicial Branch cannot be given. Any fiscal effect on the Judicial Branch associated with HB 2697 is not reflected in *The FY 2023 Governor's Budget Report*.

The Kansas Department for Aging and Disability Services (KDADS) requested \$2.8 million from the State General Fund in its FY 2023 budget submission to fund HB 2697 and the full amount is included in the Governor's Budget Recommendation for FY 2023. During October 2021, there were a total of 50 defendants waiting for forensic competency evaluation for an average of 140 days to be admitted to Larned State Hospital (LSH). There were 124 defendants waiting 179 days for competency restoration treatment. Using the current per evaluation costs under the mobile evaluation contract, the cost to conduct all the evaluations would cost \$90,450. For this grant program, KDADS assumes the Community Mental Health Centers (CMHCs) would have slightly higher costs in some areas of the state due to the volume of cases and the need to recruit additional staff. Research in the *Journal of the American Academy Psychiatry and Law* in 2019 looked at several studies of forensic competency in different treatment locations. The cost for forensic competency restoration in jails was between \$42 and \$222 per day. For this estimate, KDADS assumes a \$200 daily cost for 90 days to complete the restoration. That would make the unit cost \$20,250 per restoration ordered. The mobile competency contract also allows \$100 per hour for travel and court time which is added to the estimate for a total cost of \$2.8 million.

The grants would be structured to allow CMHCs to design services in cooperation with courts and jails within their catchment areas to complete the competency evaluations needed by courts to continue criminal cases with shorter delays and increase the capacity around the state to perform competency restoration in jails. By specifically investing funds in reducing the waiting time for evaluation and restoration, criminal cases would move more quickly through the process

resulting in reduced housing of mentally ill patients in jails. By reducing the backlog in cases, the space for forensic treatment at LSH could be reserved for the most severe cases and for the defendants criminally committed to LSH. Any fiscal effect on KDADS associated with HB 2697 is reflected in *The FY 2023 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Adam Proffitt", with a stylized flourish at the end.

Adam Proffitt
Director of the Budget

cc: Leigh Keck, Aging & Disability Services
Randy Bowman, Corrections
Vicki Jacobsen, Judiciary
Jay Hall, Association of Counties