

To: House Judiciary Committee

From: Bill Rein
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Subject: H.B. 2584, Amending Statutes Relating to Criminal Trial Competency.

Chairman Kinzer and members of the Committee:

I appreciate the opportunity to present testimony on H.B. 2584. This bill would amend several statutes relating to criminal trial competency evaluations and court procedures.

HB 2584 is similar in content and construction to legislation proposed during the 2012 session in the form of HB 2497. However, the agency responsible for commencement of involuntary commitment proceedings and oversight of residential treatment facilities and state hospitals is now the Kansas Department for Aging and Disability Services (KDADS). The bill should be clarified to address the concerns below.

- Reference to the “[department] for children and families” is used throughout the bill. KDADS is now the agency responsible for the operation of state hospitals and licensing community mental health centers. It is also the agency responsible for filing involuntary commitment proceedings when criminal defendants are found not competent to stand trial.
- State hospitals are not specifically included in the definitions set forth in Section 2 of the bill, even though state security hospital, Larned State Hospital, and Osawatomie State Hospital perform many forensic evaluations for district courts in criminal cases. This should be clarified.

KDADS stands in opposition to the changes proposed in HB 2584 for the following reasons:

- The bill would change the long-standing definition of competency to stand trial which has been used in Kansas since at least 1977. Trial competency is statutorily defined at K.S.A. 22-3301. A criminal defendant is incompetent to stand trial if, due to mental illness or defect, the defendant is (1) unable to understand the nature and purpose of criminal proceedings or (2) unable to make or assist in making a defense. Changing a long-standing definition should only be done upon a demonstration of need which the agency has been unable to find. Courts, attorneys, and mental health professionals have relied on the current definition to determine trial competency for decades and none of them would be well-served by changing it without a significant reason.
- Current law is very clear about the role of state security hospital and other state institutions in providing trial competency evaluations and treatment for those criminal defendants who have been found not competent to stand trial. K.S.A. 22-3302(3) sets forth the procedure for the court to obtain an evaluation of the defendant’s competency to stand trial. If the defendant is charged with a felony, the court may

commit the defendant to state security hospital or any county or private institution for examination and report to the court. If the defendant is charged with a misdemeanor, he may not be committed to state security hospital or other state institution unless approved by the director of a local county or private institution.

- The court also has the option to designate any appropriate psychiatric clinic, psychological clinic, or mental health center to conduct outpatient evaluations if the defendant is in jail or on pretrial release. This provision is designed to allow evaluations in the community for benefit of the defendant and the court. Community evaluations are also much more cost-efficient for the state than inpatient evaluations.
- Finally, the court can appoint two qualified licensed physicians or licensed psychologists to perform the evaluation and prepare the report.
- HB 2584 proposes to substantially change this procedure. Beginning on page 2, at line 4, the court would be required to determine the qualifications of all evaluators before ordering a trial competency evaluation. There is no exception for state security hospital, Larned State Hospital, Osawatomie State Hospital, community mental health centers, or county or private institutions in this section. Does this mean that the court could not order an evaluation at one of these facilities without a case by case approval of the mental health professional employed by one of them to conduct an evaluation? This should be clarified.
- Section 6 of the bill seems to continue the current practice of allowing courts to make commitments to state security hospital, other state hospitals, and county or private residential facilities for evaluations. However, mental health centers are not specifically mentioned. This omission should be clarified.
- In 2009, state security hospital conducted 141 competency to stand trial evaluations pursuant to orders for evaluation and treatment from criminal courts. The figures for subsequent years are 154 in 2010, 148 in 2011, 159 in 2012, and 204 in 2013. As mentioned earlier in this testimony, community mental health centers conduct as many trial competency evaluations in the community as possible. Evaluations performed at state security hospital and other state hospitals are done at no charge to district courts.
- On page 2, line 29, the bill would reduce the timeframe for completing competency evaluations from 60 days to 21 days. This change might require the addition of qualified forensic evaluators to complete the evaluations within a shorter statutory timeframe.
- If state security hospital, other state hospitals, and community mental health centers are no longer involved in most evaluations, an increase in commitments may occur. This should not be the case if evaluators apply consistent criteria in forming their opinions. However, KDADS does not know what the proponents of HB 2584 are attempting to accomplish.
- As stated in Sec 4 (b) (1). “On and after January 1, 2016, any evaluator appointed by the court shall be credentialed by the institute for Kansas forensic examiners. Any person working as an evaluator prior to January 1, 2016, shall have completed at least 24 hours of continuing education in forensics. Any person seeking initial appointment by the court as an evaluator on or after January 1, 2016, shall have completed at least 24 hours of continuing education in forensics and at least six months of supervised internship prior to performing any evaluation without supervision”. It would not serve the State, the courts, or criminal defendants to have fewer clinicians available to perform these evaluations. Furthermore, state security hospital currently offers training to clinicians. Requiring training from a single source is unnecessary.

- KDADS does not know anything about the institute for Kansas forensic examiners, where it is located, why it believes it is a singularly superior institution for credentialing mental health professionals, or the number and type of forensic reports it produces every year.
- The possibility of an increased number of defendants who have been found incompetent to stand trial could place a demand on civil treatment beds at both at LSH and OSH. Also, it is not clear how long the evaluations might take. However, based on agency experience, independent, separate evaluations can take several months to complete which would cause treatment beds to be occupied for extended periods of time.
- The fiscal impact on the hospital system is profound with the estimate for \$3.3 million dollars, which was necessary for increased bed capacity and staffing costs at the State Hospitals. The estimated cost of the new unit includes salary expenditures of \$2,673,701 for 51.5 FTE positions and other operating costs of \$585,855 for the first year and \$437,409 for subsequent years. The additional other operating expenditures in the first year would be one-time costs for supplies, equipment and furniture. More costs could result from the expanded definition of mental incompetence and specialized training in HB 2584, but cannot be developed until after additional details are specified.

With the above noted, KDADS is in opposition to this legislation.