Competency Proceedings for Defendants Charged with Serious Offenses; Municipal Court Competency; SB 374

SB 374 requires further consideration of evaluation and treatment during the course of competency proceedings for defendants charged with the most serious offenses and establishes procedures in the Kansas Code of Procedure for Municipal Courts (Municipal Code of Procedure) concerning a defendant's competency to stand trial. The bill also amends law in the Municipal Code of Procedure and the Kansas Code of Criminal Procedure to reflect the new procedures created by the bill.

Commitment of Incompetent Defendants

Outpatient Evaluation and Treatment Prohibited

The bill amends law governing the commitment of incompetent defendants to remove provisions allowing outpatient evaluation and treatment for defendants charged with misdemeanor or felony offenses.

Under prior law, for a defendant charged with a felony offense, a commitment to the state security hospital or a state hospital may be conducted on an inpatient basis, but could occur on an outpatient basis if the defendant meets the screening criteria established by the state security hospital.

The bill directs that for defendants charged with a felony offense, evaluation and treatment shall be ordered to be conducted on an inpatient basis by the state security hospital or a state hospital, or their agents.

However, the bill allows outpatient evaluation and treatment if it is ordered by an appropriate state, county, or private institution or facility, provided the defendant meets the screening criteria established by the state security hospital.

Victim Notification

Under prior law, the institution or facility conducting outpatient treatment must notify the prosecuting attorney in the county where the criminal proceeding is pending for the purpose of providing victim notification. The bill directs that such notification be made instead to the prosecuting attorney for the pending criminal proceeding for the purpose of providing victim notification.

Who May Commence Involuntary Commitment Proceedings

The bill provides that when the defendant has not attained competency to stand trial within six months after the date of the commencement of treatment, the court must order the prosecuting attorney for the pending criminal proceeding to commence involuntary commitment proceedings. Under prior law, involuntary commitment proceedings were to be commenced by the prosecuting attorney where the charges were filed or by the Secretary for Aging and

Disability Services (Secretary). The bill removes several references to the process as described by current law.

Effect of Charge of Attempt, Conspiracy, or Criminal Solicitation on the Definition of "Mentally Ill Person Subject to Involuntary Commitment for Care and Treatment"

Under continuing law, when a defendant is charged with certain felonies and commitment proceedings have commenced, for the purposes of such proceeding, the law defines such person as a "mentally ill person subject to involuntary commitment for care and treatment." The bill provides that, in addition to the specified felonies described in continuing law, an attempt, conspiracy, or criminal solicitation of any such offense is also included. References to this change are repeated throughout the bill.

When Defendant Objects to Psychotropic Medications

The bill amends law concerning when a defendant objects to receiving psychotropic medication to restore competency. The bill requires the matter to be set for a hearing when the medical director, within 30 days of receipt of a defendant's objection, certifies to the court whether medication would aid in restoring the defendant's competency. The hearing would be set within 30 days after receipt of certification unless exceptional circumstances warrant delay. The bill requires the prosecuting attorney to establish by clear and convincing evidence certain relevant facts, including whether the medication is substantially likely to render the defendant competent to stand trial.

The bill requires the defendant to be represented by counsel at such hearing but the defendant is not required to be present at the hearing. However, the court may permit the prosecuting attorney and the defendant to appear at the proceedings, call or question witnesses, and offer argument to the court. The defendant's attorney in the pending criminal proceeding also has the same standing to participate in the hearings to the same extent as the defendant's competency counsel.

When Involuntary Commitment Proceedings Have Commenced

Whenever involuntary commitment proceedings have been commenced, the bill requires the petition to be accompanied by:

- The court order to commence involuntary commitment proceedings;
- The initial evaluation to determine competency; and
- The reports pertaining to whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future.

The bill does not require such petition to include a state screen or signed certificate.

The bill requires the written report of the evaluation to include:

- A report on the reason for admission or case filing;

- The current mental status of the defendant;
- The medications that the defendant is currently taking, if any;
- The likelihood of the defendant causing harm to self or others, including an analysis of whether the defendant understands the seriousness of the charges alleged; and
- Any diagnosis of the defendant.

The bill specifies, having been found incompetent in the pending criminal case, the defendant would be deemed to lack capacity to make informed decisions concerning treatment until such time as the chief medical officer overseeing the defendant's treatment determines that competency is restored.

Procedure When Defendant is Not Civilly Committed or is Discharged

Concurrent Standing of Prosecuting Attorneys

The bill provides that the prosecuting attorney for the pending criminal proceeding has standing, concurrent with the prosecuting attorney of the county in which the involuntary commitment hearing is held, to:

- Appear at such proceedings;
- Call or question witnesses; and
- Offer argument to the court.

The bill also specifies that the defendant's attorney in the pending criminal proceeding has the same standing to participate in the hearings to the same extent as any prosecuting attorney that is allowed to participate in the hearing.

Additional Evaluation and Treatment

The bill also specifies that if the defendant is not committed to a treatment institution or facility as a patient, the defendant would remain in such institution or facility until the court has determined that additional evaluation and treatment is no longer warranted pursuant to provisions in the bill.

When Defendant Has Not Been Committed or Has Been Discharged But is Not Likely to Regain Competency Within the Foreseeable Future

Whenever involuntary commitment proceedings have been commenced, and the defendant has not been committed or has been released from such commitment pursuant to continuing law but the court determines that a probability still does not exist that the defendant will regain competency within the foreseeable future, the court is required to consider the nature

of the pending criminal proceedings to determine if additional evaluation and treatment are necessary.

If the defendant is charged with a misdemeanor or nonperson felony, the court is required to dismiss the criminal proceedings without prejudice, and the prosecuting attorney provides victim notification.

If the defendant is charged with a person felony, the court is required to provide notice to the parties of the pending criminal proceedings that, unless the prosecuting attorney objects in writing within 14 days of receipt of such notice, the criminal proceedings must be dismissed without prejudice. If the prosecuting attorney objects, the court is required to set the matter for hearing within 14 days after receipt of such objection to determine whether to enter an order of further commitment for additional evaluation and treatment pursuant to the bill. The court is allowed to grant a continuance of the hearing for good cause.

If the defendant is charged with an off-grid felony, any nondrug severity level 1 through 3 felony, aggravated indecent liberties with a child, aggravated indecent solicitation of a child, or certain violations of unlawful sexual relations, or an attempt, conspiracy, or criminal solicitation of any offense described above, the court is required to set the matter for hearing to determine whether to enter an order of further commitment for additional evaluation and treatment pursuant to the bill.

Hearing to Determine Further Evaluation and Treatment

The prosecuting attorney has the burden to establish, by clear and convincing evidence, that there is a compelling state interest in ordering further evaluation and treatment for the defendant. The defendant is required to be represented by counsel at the hearing but the defendant is not required to be present at the hearing, at the discretion of the court.

However, the defendant's attorney in the pending criminal proceeding has the same standing to participate in the hearings to the same extent as any prosecuting attorney that is allowed to participate in the hearing.

In making a determination whether there is a compelling state interest in ordering further evaluation and treatment, the court is required to review the nature and seriousness of the pending charges, including whether there is probable cause to support the pending charges. The court is required to consider:

- Whether the alleged offenses create a serious risk to public safety and evaluate:
    - Whether the charge includes an allegation that the defendant actually inflicted bodily or emotional harm on another person or created a reasonable apprehension of bodily or emotional harm to another person;
    - The extent of the impact of the alleged offense on public safety;
    - The number and nature of related charges pending against the defendant;
    - The length of potential confinement if the defendant is convicted; and

- The number of potential and actual victims or persons impacted by the defendant's alleged acts;

- The prior history of the defendant, including, but not limited to, criminal history, treatment history, and history of violence; and

- Any evidence of whether further treatment is likely to be successful in restoring competency or reducing the risk of offender recidivism.

If the court finds that there is a compelling state interest in ordering further evaluation and treatment of the defendant, the court is required to proceed in accordance with continuing law.

If the court finds that there is no compelling state interest in ordering further evaluation and treatment of the defendant, the court is required to dismiss the case without prejudice, and the prosecuting attorney would provide victim notification.

Hearing to Determine Whether a Defendant is Likely to Cause Harm to Self or Others

If the criminal defendant is charged with an off-grid felony or severity level 1 through 3 felony, aggravated indecent liberties with a child, aggravated indecent solicitation of a child, or certain violations of unlawful sexual relations, or an attempt, conspiracy, or criminal solicitation of any offense described above, there is a presumption that such criminal defendant is likely to cause harm to self or others whenever the court is required to determine whether a criminal defendant is a mentally ill person subject to involuntary commitment pursuant to the Care and Treatment Act for Mentally Ill Persons (Act).

During the course of an involuntary commitment proceeding to determine whether a defendant is likely to cause harm to self or others, the bill requires the court to conduct a hearing to consider the totality of the circumstances, including, but not limited to, prior convictions or adjudications pending crimes allegedly committed by the defendant, and any presumption as described by the bill.

The bill prohibits a criminal defendant from being discharged from an involuntary commitment without the court conducting a hearing in accordance with continuing law in the Act and in accordance with the bill to determine whether the criminal defendant remains a mentally ill person subject to involuntary commitment.

Municipal Court Competency to Stand Trial

The bill allows a municipal judge to order a psychiatric or psychological examination of a defendant when the judge finds reason to believe that such defendant is incompetent to stand trial. Such examination may be ordered at any time after a defendant has been served with the complaint and before the satisfaction of the sentence, but once ordered, is required to be completed within 60 days. An examination may only be ordered after a hearing and all speedy trial requirements would be suspended during such examination.

The bill authorizes the court to order such examination and report be conducted by:

- An appropriate state, county, or private institution or facility;

- A licensed physician or psychologist who is qualified through training or experience; or

- An examiner from a list of competency examiners used in the district court where the municipal court is located.

The bill provides that no statement made by a defendant during any examination may be admitted in evidence against such defendant in any criminal proceeding. This rule applies regardless of whether the defendant consents to the examination.

The costs for an examination ordered pursuant to the bill are paid from the municipal court funds or the general fund of the municipality.

Before the expiration of the 60-day examination period, the bill requires the court-approved examiner to certify to the court whether such defendant is competent to stand trial. Upon certification to the court that a defendant subject to examination has been determined by the examiner to be competent to stand trial, the suspended proceedings are required to resume.

Upon certification to the court that a defendant has been determined by the examiner to be incompetent to stand trial, the bill requires the court to conduct a hearing with the defendant present and make a written finding regarding the competency of such defendant. If after the hearing the court finds that a defendant is incompetent to stand trial, the criminal charges against the defendant are required to be dismissed without prejudice, and the city attorney may file a petition pursuant to the Act or request that the district attorney or county attorney review the case for the filing of a complaint in district court.

If the city attorney receives credible information that a defendant who was previously found to be incompetent has regained competency, the bill allows the city attorney to refile the charge within the applicable statute of limitations. In this scenario, the bill requires the court to conduct a hearing with the defendant present to make a finding in writing regarding the current state of the defendant's competency.

The bill amends the definitions section of the Municipal Code of Procedure to include a definition of "incompetent to stand trial" and "treatment provider."

The bill amends law in the Kansas Code of Criminal Procedure concerning the ability of a court to determine competency to specify the court may rely on the examination ordered by a municipal court.

Effective Date

The provisions concerning municipal court competency become effective on July 1, 2026.