

SESSION OF 2026

**SUPPLEMENTAL NOTE ON SENATE BILL NO. 374**

As Amended by Senate Committee on Judiciary

**Brief\***

SB 374, as amended, would require further consideration of evaluation and treatment during the course of competency proceedings for defendants charged with the most serious offenses. The bill would become effective upon publication in the *Kansas Register*.

***Commitment of Incompetent Defendants***

*Outpatient Evaluation and Treatment Prohibited*

The bill would amend law governing the commitment of incompetent defendants to remove provisions allowing outpatient evaluation and treatment for defendants charged with misdemeanor or felony offenses. For a defendant charged with a felony offense, a commitment to the state security hospital or a state hospital must be conducted on an inpatient basis. Under current law, such commitment may be conducted on an inpatient basis, unless the defendant meets the screening criteria established by the state security hospital. If the defendant meets the screening criteria, the bill would require outpatient treatment to be conducted by an appropriate state, county, or private institution or facility.

*Victim Notification*

Under current law, the institution or facility conducting outpatient treatment must notify the prosecuting attorney in

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <https://klrd.gov/>

the county where the criminal proceeding is pending for the purpose of providing victim notification. The bill would provide 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 would provide 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 current law, involuntary commitment proceedings may be commenced by the prosecuting attorney where the charges are filed or by the Secretary for Aging and Disability Services (Secretary). The bill would remove 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 current law, when a defendant is charged with certain felonies and commitment proceedings have commenced, for the purposes of such proceeding, law defines such person as a "mentally ill person subject to involuntary commitment for care and treatment." The bill would provide that, in addition to the specified felonies described in current 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 would amend law concerning when a defendant objects to receiving psychotropic medication to restore competency. The bill would require the matter 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 would require the prosecuting attorney 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 would require the defendant be represented by counsel at such hearing but the defendant would not be required to be present at the hearing, at the discretion of the court.

#### *When Involuntary Commitment Proceedings Have Commenced*

Whenever involuntary commitment proceedings have been commenced, the bill would require the petition 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 would not require such petition to include a state screen or signed certificate.

The bill would require 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 would specify, 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 would replace a provision referencing the Secretary commencing involuntary commitment proceedings with a provision providing that the prosecuting attorney for the pending criminal proceeding would have standing, concurrent with the prosecuting attorney of the county in which the hearing is held, to:

- Appear at such proceedings;
- Call or inquire of any witness with information relevant to the hearing; and
- Offer argument to the court.

### *Additional Evaluation and Treatment*

The bill would also specify 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 would be 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 would be required to dismiss the criminal proceedings without prejudice, and the prosecuting attorney would provide victim notification.

If the defendant is charged with a person felony, the court would be 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 would be 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 would be 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 would be 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 would have the burden to establish, by a preponderance of the evidence, that there is a compelling state interest in ordering further evaluation and treatment for the defendant. The defendant would be required to be represented by counsel at the hearing but the defendant would not be required to be present at the hearing, at the discretion of the court.

In making a determination whether there is a compelling state interest in ordering further evaluation and treatment, the court would be required to review the nature and seriousness of the pending charges, including whether there is probable cause to support the pending charges. The court would be 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 would be 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 would be 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 would be 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 would require 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 would prohibit 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 this section to determine whether the criminal defendant remains a mentally ill person subject to involuntary commitment.

### **Background**

The bill was introduced by the Senate Committee on Judiciary at the request of Senator Klemp.

### ***Senate Committee on Judiciary***

In the Senate Committee hearing, **proponent** testimony was provided by the Johnson County District Attorney; the Leavenworth County Attorney and representative of the Kansas County and District Attorneys Association (KCDAA); the Office of the Attorney General; a representative of the Sedgwick County District Attorney's Office and KCDAA; and a private citizen. Proponents generally stated the bill would fix a loophole in current law that allows some of the most serious offenders to be released from commitment pending criminal proceedings.

Written-only proponent testimony was provided by the Shawnee County District Attorney, a representative of the Kansas Federation of Republican Women, and two private citizens.

**Neutral** testimony was provided by representatives of the Kansas Department for Aging and Disability Services (KDADS) and the Board of Indigents' Defense Services, who generally expressed concerns about the bill's impact on the availability of inpatient competency beds in state hospitals and overcrowding in local jails.

**Opponent** testimony was provided by a representative of the Disability Rights Center of Kansas, who stated concerns related to the overburdening of the competency system and the due process rights of mentally ill persons.

No other testimony was provided.

The Senate Committee amended the bill to:

- Clarify outpatient treatment may be conducted by an appropriate state, county, or private institution or facility in law concerning when outpatient or inpatient treatment may be ordered;
- Add language requiring a hearing after a defendant objects to taking psychotropic medications to restore competency; and
- Move language concerning a hearing to determine whether a defendant is likely to cause harm to self or others from law governing competency to stand trial in the Code of Criminal Procedure to the Care and Treatment Act for Mentally Ill Persons.

### **Fiscal Information**

According to the fiscal note prepared by the Division of the Budget on the bill, as introduced, the Office of Judicial Administration indicates enactment of the bill would increase expenditures of the Judicial Branch because it would require the courts to hold additional hearings to consider factors and make determinations in the cases outlined in the bill. In

addition, the district court clerks would be required to issue notices of such hearings. This would increase the time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. However, a precise fiscal effect cannot be estimated.

KDADS indicates that a fiscal effect cannot be estimated because there is insufficient information available to determine the effect. KDADS notes that enactment of the bill would affect the availability of inpatient competency beds because it would require defendants charged with a felony to receive inpatient restoration treatment services unless the state security hospital screening allows the defendant to receive outpatient services. This would add defendants to the wait list for inpatient treatment at Larned State Hospital and could increase the wait time for other defendants by removing the possibility of outpatient treatment if it is available through community mental health centers. KDADS also notes that enactment of the bill would delay moving defendants out of inpatient beds at Larned State Hospital due to additional requirements for the commitment hearing in which the prosecuting attorney in the criminal case is given concurrent standing to argue and present witnesses in the proceeding. The bill could also decrease the availability of inpatient care and treatment beds by requiring all defendants with serious felony charges to be committed to care instead of a treatment team to make decisions about competency. KDADS further notes that the bill could add clarity for when the criminal court should dismiss criminal charges with prejudice, but state psychiatrists and psychologists would be required to attend contested hearings to consider the additional factors. However, defendants would not be released if they are found not likely to cause harm to themselves or others because the bill would require such defendants with serious felonies to continue treatment. KDADS also notes that the bill could affect the terms of certain settlement agreements entered into by the state to move defendants through the competency process. However, a precise fiscal effect cannot be estimated.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2027 Governor's Budget Report*.

Criminal procedure; competency to stand trial; competency evaluation and treatment; involuntary commitment