Approved: March 15, 2022

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Fred Patton at 3:30 pm on Thursday, February 17, 2022, in room 582-N of the Capitol.

All members were present except:
Representative Mark Schreiber – Excused

Committee staff present:
Jason Thompson, Office of Revisor of Statutes
Kathi Rakestraw, Committee Assistant
Natalie Nelson, Legislative Research Department
Natalie Scott, Office of Revisor of Statutes
Robert Gallimore, Legislative Research Department

Conferees appearing before the Committee:
Scott Brunner, Deputy Secretary of Hospitals & Facilities, Kansas Department for Aging & Disability Services
Aileen Berquist, Community Engagement Manager, ACLU of Kansas
Mark A. Dupree Sr. Wyandotte County District Attorney, Wyandotte County District Attorney's Office
Sheriff Jay Armbrister, Douglas County Sheriff's Office
Randy Callstrom, President and CEO, Wyandot Behavioral Health Network
Sandy Horton, Executive Director, Kansas Sheriff's Association
Michelle Ponce, Associate Director, Association of Community Mental Health Center of Kansas
Lane Williams, Legal Director, Disability Rights Center of Kansas

Others in attendance:
No list available

**Hearing on: HB2697 — Making changes to the process for evaluating and treating people who are undergoing evaluation for competency to stand trial and allowing such evaluation and treatment at various facilities.**

Chairperson Patton opened the hearing on **HB2697**. Natalie Scott provided on overview of the bill. She stood for questions.(Attachment 1)

Proponent

Scott Brunner explained that **HB2697** makes important changes in the process and availability of services to conduct competency evaluations for criminal defendants. He said the bill is aimed at reducing the wait time and the number of individuals waiting for competency evaluations. **HB2697** makes an important change in the forensic competency statutes to allow for additional paths for

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

defendants to be evaluated and restored to competency. With the additional resources in the Governor's budget, **HB2697** will directly address the long wait times to evaluate and restore criminal defendants impacting costs incurred by counties as well as delays in completing criminal prosecutions. It also has the potential to strengthen partnerships between Kansas Department for Aging and Disability Services, Larned State Hospital, and communities. Mr. Brunner stood for questions. (Attachment 2)

Aileen Berquist explained under current state law, individuals generally receive the evaluation and restoration services at Larned State Hospital. However, due to staffing shortages at the state hospital, people are waiting for long periods of time--sometimes for 11 months or more. In some cases, individuals are spending more time in jail awaiting their evaluation or restoration services than they would if convicted on their underlying charges. During their wait, these individuals are held in county jails that are not equipped to handle complex mental health needs. Many individuals may be held in solitary confinement, or refuse medication, which further compounds their mental distress. This situation is dire and, though this bill does take important steps, it is not a complete solution to the problem. The American Civil Liberties Union of Kansas supports provisions in **HB2697** that, if implemented correctly, will decrease the wait time for competency evaluations and restoration services. They do have a concern this bill is only a "Band-aid" trying to address a very serious much larger problem. Ms. Berquist stood for questions. (Attachment 3)

Mark A. Dupree Sr. stated **HB2697** can help the victims in Wyandotte County receive justice sooner by providing the option for defendants' competency evaluations to be conducted electronically. In addition, **HB2697** would allow defendants to be treated and evaluated using trauma-informed principles. According to the Agency for Healthcare Research and Quality, trauma-informed care is an approach to engaging people with histories of trauma that recognizes the presence of trauma symptoms and acknowledges the role that trauma has played in their lives. This bill would employ the principles of trauma-informed care in the world of incarceration. Mr. Dupree said the Wyandotte County Sheriff, Daniel Soptic, and he are in full support of this bill. He feels they need to reduce trauma for the individuals in jail; but also strive to provide justices to victims sooner and make more fiscally responsible decisions for our county. Mr. Dupree's written testimony provides some data from Wyandotte County. He stood for questions. (Attachment 4)

Sheriff Jay Armbrister explained since taking office last year, he has gained an entirely new perspective on several systems that have been in place for years and decades, but are now in need of an overhaul, if for no other reason, than the human cost to those who are stuck in the system. Sheriff Armbrister gave an example of "Isaac" who was incarcerated for 2,138 days while awaiting a competency evaluation. Once his hearing was completed his sentence was for 480 days. The financial cost to the taxpayers was unfair along with the unfair treatment of "Isaac". Sheriff Armbrister's written testimony provides all the details of the example he explained. He stood for questions. (Attachment 5)

Randy Callstrom said the Wyandot Center works very closely with the judicial system in Wyandotte County and for many years completed the evaluations to determine a person's competency to stand

trial. As of this Monday, February 14, there were seventeen (17) Wyandotte County defendants ordered to Larned State Hospital for competency restoration. These individuals have been awaiting placement for as long as 328 days. After discussion with the County Sheriff, the District Attorney office, and district judges, they believe **HB2697** offers an opportunity to expedite restoration and the judicial process for certain individuals. This seems to be in the best interest of the individual and to the county. Mr. Callstrom stood for questions. (Attachment 6)

Proponent Written

Amy Campbell, Lobbyist, Kansas Mental Health Coalition (Attachment 7)

Neutral

Sandy Horton explained 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. They appreciate the efforts to find solution to this long-standing problem. The reason she is testifying in a neutral position is that, in their opinion, there are significant amendments needed to the bill directly affecting the county jails. Her written testimony outlines those concerns. Ms. Horton stood for questions. (Attachment 8)

Michelle Ponce testified that **HB2697** will increase the number of providers able to provide competency evaluations and restoration services, including Community Mental Health Centers. Such evaluations may be provided in safe, secure locations across the state, including jails, either in person or via tele-health. Ms. Ponce explained a recommendation where the State provides appropriate training be required for clinicians who have not previously provided these services. With additional resources and training, it is their hope that the remaining CMHCs will be able to increase capacity over the next several years to also provide these services. Further, they want to emphasize that the language regarding "appropriate" facility and/or mental health center should be interpreted by those organizations themselves, based on their capacity to provide the service. That is, CMHCs must retain the autonomy and authority to decide when they are able to provide mobile competency or restoration services. Ms. Ponce stood for questions. (Attachment 9)

Neutral Written

Natalie Chalmers, Assistant Solicitor General, Office of the Attorney General (Attachment 10)

John Goodyear, General Counsel, League of Kansas Municipalities (Attachment 11)

Opponent

Lane Williams explained the Disability Rights Center of Kansas (DRC) supports the goal of establishing more options to provide qualified evaluations and, if necessary, restoration treatment for criminal defendants concerning the issue of competency to stand trial. DRC further supports conducting the evaluations and providing the treatment locally and on an outpatient basis whenever possible. These qualified options could help address the unconscionably long wait times most criminal defendants experience before space opens for them at one of the state hospitals. DRC, however, has concerns with the bill as drafted which warrants further review, and they suggest that the Judicial Committee refer the bill to the Kansas Judicial Council to review the proposed amendments and other parts of statutory procedure described in his written testimony along with reporting its findings and recommendations. Mr. Williams stood for questions. (Attachment 13)

Chairperson Patton closed the hearing on **HB2967**.

**Final action on bills previously heard**

Chairperson Patton opened final action on **HB2652**. Natalie Scott provided a brief overview of the bill.

*Chairperson Patton moved to amend **HB2652** with the technical amendment, seconded by Representative Hoheisel. Motion carried*. (Attachment 14)

*Representative Carmichael moved to wave the applicable rules of the committee and proceed to work **SB286** without the necessity of a hearing or further notice. Representative Hoheisel seconded. Motion carried*.

*Chairperson Patton moved to strike the contents of **SB286** and substitute the contents of **HB2652** as amended. Representative Hoheisel seconded. Motion carried*.

*Chairperson Patton moved to pass **House Sub for SB286**. Representative Hoheisel seconded. Motion carried*. Members requesting their votes be recorded were: Yes: Hoheisel, Carmichael, Ohaebosim, Highberger.

Chairperson Patton opened final action on **HB2556**. Natalie Scott provided a brief overview of the bill.

*Chairperson Patton moved to amend **HB2556** by adding the contents of **HB2557** into **HB2556**, seconded by Representative Curtis. Motion carried*. (Attachment 15)

*Representative Curtis moved to pass **HB2556** as amended. Representative Owens seconded. Motion*

*carried*. Members requesting their votes be recorded were: Yes: Hoheisel, Carmichael, Ohaebosim, Highberger.

Chairperson Patton opened final action on **HB2575**. Natalie Scott provided a brief overview of the bill.

*Representative Curtis moved to amend **HB2575** with the courts amendment, seconded by Representative Wheeler. Motion carried*. (Attachment 16)

*Representative Curtis moved to amend **HB2575** with the written objective amendment, seconded by Representative Wheeler. Motion carried*. (Attachment 17)

*Representative Curtis moved to pass **HB2575** as amended. Representative Hoheisel seconded. Motion carried*. Members requesting their votes be recorded were: Yes: Hoheisel, Carmichael, Ohaebosim, Highberger.

Chairperson Patton opened final action on **HB2364.** Natalie Scott provided a brief overview of the bill.

*Representative Carmichael moved to pass **HB2364**. Representative Neely seconded. Motion carried*. Members requesting their votes be recorded were: Yes: Hoheisel, Carmichael, Ohaebosim, Highberger.

Chairperson Patton opened final action on **HB2608.** Natalie Scott provided a brief overview of the bill.

*Representative Wheeler moved to pass **HB2608**. Representative Owens seconded. Motion carried*. Members requesting their votes be recorded were: Yes: Hoheisel, Carmichael, Ohaebosim, Highberger.

Chairperson Patton adjourned the meeting at 5:14 pm.