

Proponent Testimony

HB 2697 – concerning crimes, punishment and criminal procedure; relating to competency to stand trial; mobile competency evaluations

**House Judiciary Committee
Scott Brunner, Deputy Secretary for Hospitals & Facilities
Kansas Department for Aging and Disability Services**

February 17, 2022

Mr. Chairman and members of the House Judiciary Committee.

My name is Scott Brunner, Deputy Secretary for Hospitals and Facilities with the Kansas Department for Aging and Disability Services (KDADS). I am pleased to present testimony in support of HB 2697 which KDADS requested. HB 2697 makes important changes in the process and availability of services to conduct competency evaluations for criminal defendants.

State Security Program

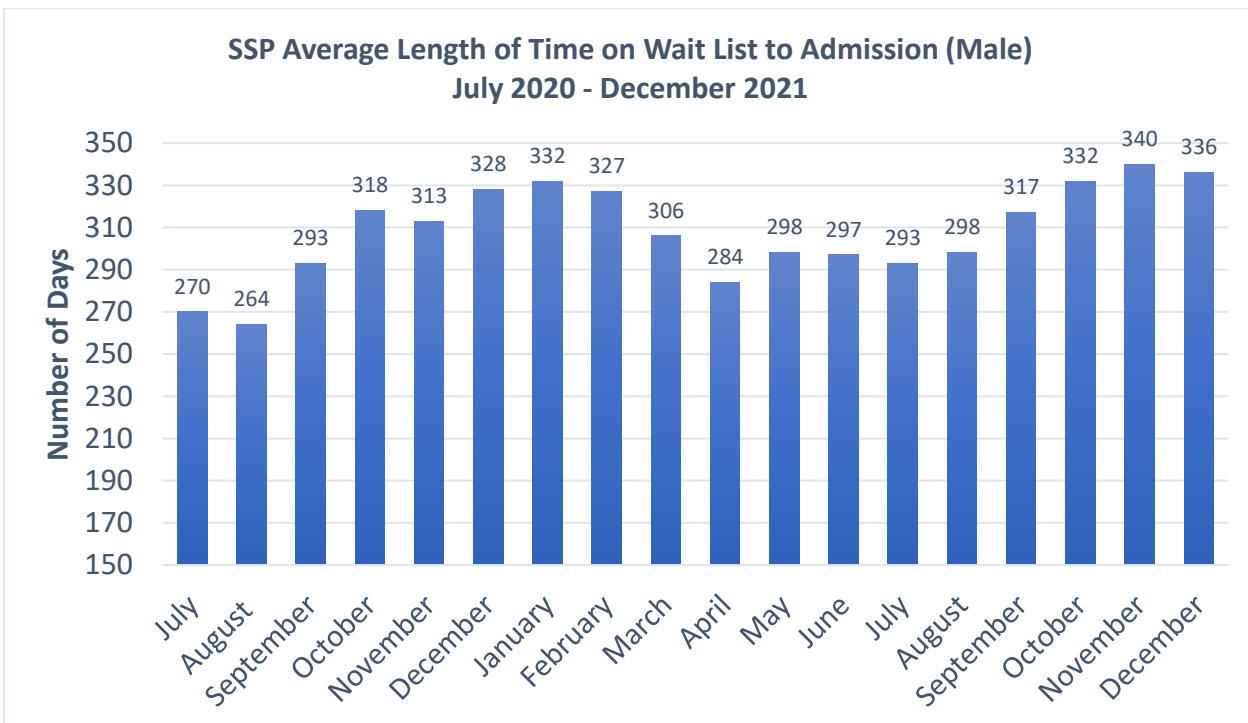
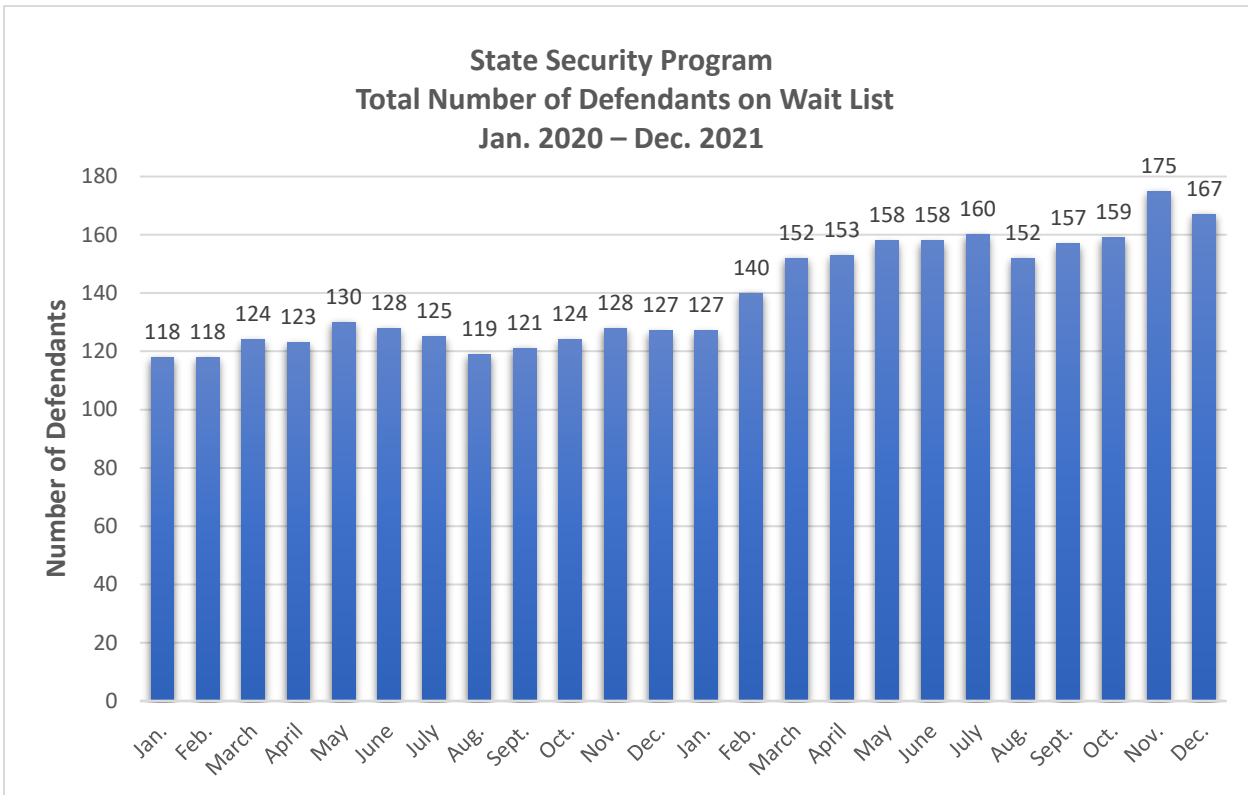
KDADS oversees the operations at Larned State Hospital which includes the State Security Program that serves as the primary treatment location for defendants referred by criminal courts in Kansas. When a defendant may not be competent to stand trial, K.S.A. 22-3302 allows a judge to commit that defendant to the state security hospital at Larned State Hospital for their competency to be evaluated. The staff at Larned State Hospital (LSH) review the individual's symptoms and conditions and writes a report back to the court providing an opinion about the defendant's ability to participate in their defense and criminal case. If the defendant is not competent, the court can then commit the defendant, pursuant to K.S.A. 22-3303, to the state security hospital to receive competency restoration treatment. The treatment goal is to restore the defendant's competency so the criminal case can proceed. Under current law, if the defendant cannot be restored to competency, the Secretary of KDADS is directed to file a care and treatment case to move that defendant to the Psychiatric Services Program at Larned or to Osawatomie State Hospital for involuntary care and treatment.

Capacity at Larned State Hospital

This process, relying on Larned State Hospital, has led to long wait times for defendants to access treatment. LSH has 120 beds in the State Security Program (SSP) for referrals from the district courts including male and female defendants. Over the course of the COVID-19 pandemic, the need to create isolation and quarantine space reduced available beds to 68 for males and 20 for females for a total of 78. Last year, a Governor's Budget Amendment (GBA), restored funding for 30 SSP beds. However, due to high staff vacancy rates, LSH is unable to fill positions to safely staff this unit. Current vacancy rates are 47.8 percent for the direct care staff or Mental Health Disability Technicians, 75.6 percent for Licensed Practical Nurses, and 54.3 percent for Registered Nurses on the SSP program. Until the nursing department vacancy rate reach approximately 20 to 25 percent for each of these disciplines, SSP cannot safely open this unit. However, reduced availability of staffing during the end of FY 2021 and into FY 2022, required LSH to continue keeping SSP District Court capacity between 75 and 78.

These reductions in capacity have increased the number of defendants waiting for treatment at Larned and the amount of time they spend waiting. As the graphs below show, the number of defendants waiting to receive treatment at LSH has increased from 118 to 167 between January 2020 and December 2021. The time spent waiting for admission to LSH has also increased from 270 to 336 days between July 2020 and December 2021. These wait times slow the process for defendants to be evaluated or restored to competency. Defendants wait for treatment at LSH in county jails at the county's expense, at times without access to any mental health treatment. The delay also slows the criminal court process

for those defendants that either wait to have their competency to stand trial evaluated or be restored sufficiently for the criminal process to proceed. COVID-19 closing criminal courts, delays in court orders to move defendants from competency evaluation to restoration, and statutory limits on medication over objection unless a defendant is in mental health crisis or dually committed with a care and treatment order also contribute to a slow turn over in SSP beds at LSH.



Mobile Forensic Evaluation

One way LSH has worked to reduce the wait times for individuals to be evaluated or restored to competency is through mobile forensic evaluation. SSP uses providers under contract with LSH to perform evaluations as well as provide competency restoration services within secure confinement settings or in the community for individuals on bond. In September 2019, SSP began implementing a mobile evaluation process. During FY 2021, mobile evaluators completed 24 evaluations in 21 different counties. Since the inception of mobile competency, SSP has completed over 50 mobile evaluations.

LSH continues to work with Kansas counties, courts, jails, and other community stakeholders to expand services for individuals awaiting admission to the SSP. By increasing mobile competency orders and services, KDADS anticipates reducing wait times for evaluations and reducing transportation costs for the counties. The Governor's FY 2023 Budget Recommendation includes an additional \$2.8 million from the State General Fund for expansion of the pool of providers to conduct mobile competency evaluations and competency restoration services. The funding would be used to increase evaluators and mobile competency opportunities, which could include grants or contracts with Community Mental Health Centers (CMHCs) to partner with local law enforcement and district courts to complete forensic competency reviews for criminal defendants without transporting or waiting for space at Larned State Security Hospital.

The grants would be structured to allow mental health providers to design services in cooperation with courts and jails to complete competency evaluations needed by courts to continue criminal cases with shorter delays. These agreements would increase the capacity in communities around Kansas to perform competency evaluations and potentially restoration services in jails that are interested and able to serve defendants in their home counties rather than transporting to LSH. By specifically investing funds in reducing the waiting time for evaluation and restoration, criminal cases will move more quickly through the process resulting in reduced housing of mentally ill persons in jails. Reducing the backlog in cases will reserve the space for forensic treatment at Larned State Hospital for the most severe cases and for the defendants criminally committed to LSH.

Purpose of HB 2697

HB 2697 directly supports this enhancement request by expanding the types of locations and providers that could be authorized by the courts to perform a forensic evaluation. HB 2697 amends K.S.A. 22-3302 to allow courts to order an evaluation from the state security hospital or a state hospital or their agents. This would specifically authorize a contractor working under the authority of the state hospitals to perform a forensic evaluation. The existing statute language authorizes other "...appropriate state, county, private institution or facility..." to perform evaluations. HB 2697 amends that section further to allow evaluations to be conducted in person or by electronic means while the defendant is in jail, at a secure location, or on pretrial release. This provision allows the mobile evaluation to be completed where the defendant is in the community using in person or tele video evaluators to complete the process without requiring transporting the defendant to LSH.

- In that section, HB 2697 also allows a court to reduce the number of physicians or psychologists appointed to conduct an evaluation from two to one. That simplification continues to allow a private physician or psychologist to work for courts to conduct evaluations but reduces the required number needed from two to one.
- In section 1 of the bill, on page 2, line 14 the bill clarifies that the competency evaluation ordered by the court must be completed with a report back to the court within 60 days that begins from the date of the defendant's admission to LSH or another institution.
- Section 2 of HB 2697 makes changes to K.S.A. 2021 Supp 22-3303 which specifies the process for forensic competency restoration treatment. The objective was to allow for an outpatient path for competency restoration services that could be completed in facilities other than LSH or while a defendant remained in jail, on pretrial release, or in another secure facility. The current statute only authorizes courts to order defendants to LSH for competency restoration.
- The amendments in Section 2 would specify that courts could order defendants to competency restoration on an [outpatient or inpatient basis, by the state security hospital or its agent, a state hospital or its agent or any appropriate state, county, private institution or facility](#). The outpatient treatment could be in person or by electronic means in jail, at another secure location, or on pretrial release. The bill also requires that defendants with misdemeanor charges should be ordered to outpatient restoration treatment. That will reserve the inpatient beds at LSH and other secure facilities for defendants with more serious felony charges.

Pilot Project

KDADS currently has a pilot project to demonstrate the use of mobile competency operating through LSH to perform competency restoration in county jails. In Shawnee County, working with the Valeo, the District Court and Jail, four defendants began receiving competency restoration treatment while in the Shawnee County Jail. The treatment is led by a psychologist from LSH. The four defendants in the program have preferred access to beds at Larned if their treatment does not progress in the jail. So far two of those defendants cooperated with treatment and the reports to the court are being written. One defendant was not successful and was sent to LSH for inpatient restoration and the fourth continues in treatment at the Shawnee County Jail. Additional defendants are being identified to take the place of the defendants in the outpatient pilot. Using an outpatient treatment path saved Shawnee County from delaying the legal process for those defendants and avoided the need to transport defendants to LSH.

HB 2697 would make these types of projects more possible by separating the timeframe for outpatient treatment from 90-day clock to report back to the court on competency restoration. The current statute that only identifies inpatient restoration at LSH based on reporting the results of competency treatment to the court 90 days after starting treatment. For our pilot projects, defendants who stop participating, or who are not progressing in the restoration process may need to be admitted to LSH. When this occurs, the defendant who is brought in may be admitted prior to other defendants who have been waiting for inpatient admission. Because of that 90-day clock, the mobile competency project has to complete its work within 90 days or the court has to move the defendant to an additional 90-days of restoration or file a Care and Treatment Case for that defendant. The outpatient language in HB 2697 would allow more defendants to enter the outpatient treatment path without holding beds at LSH.

Additional Improvements in HB 2697

The final significant change in Sections 2 and 3 of HB 2697 restructure K.S.A. 22-3303 to describe the forensic treatment path for inpatient restoration and creates work currently underway from LSH. Inpatient evaluation is largely the same as the current language in K.S.A. 22-3303 that relies on LSH, or a state hospital, their agents or other appropriate facilities, to evaluate defendants and provide restoration services. The bill then adds a similar path, with reporting requirements back to the court and timelines for completing the competency restoration, for outpatient treatment options in the community or county jails.

HB 2697 requires regular communication between the outpatient treatment location and the court. If outpatient treatment is terminated based on the defendant's mental health condition or behaviors, the court must be notified within 10 days of outpatient treatment ending and the State Security Hospital must be notified. Law enforcement would be ordered to transport the defendant to LSH for inpatient restoration treatment as soon as a bed becomes available. Information must also be shared with the State Security Hospital on the defendant's treatment and criminal case to help with managing inpatient admissions. This provision allows LSH to manage available bed space based on defendants that are receiving inpatient or outpatient restoration services that could need placement at LSH during the course of their treatment. If mobile or community-based restoration services are widespread, LSH needs to have access to information about defendants that could require more intensive services

Listening to Stakeholders

In KDADS work with stakeholders developing HB 2697, there were some concerns that making these changes in the competency statute would allow the courts to order county jails or Community Mental Health Centers or other providers to perform competency evaluations or restorations without the needed resources, training, or expertise. In the view of some stakeholders, this would just shift the unfunded burden from housing in jail to providing treatment in other facilities that would have no more success in completing the defendant's evaluation or treatment. That is not the intent of the bill or KDADS.

The goal is to create pathways for completing forensic competency in addition to LSH or other state hospitals through partnerships with communities that are interested in doing the work. One way to address that in the bill would be to define appropriate facilities as a state, county, private institution, or facility that is ready, willing, and able to provide evaluation or restoration services on an outpatient basis as specified in that section of the bill. That will require more resources and staffing. That may not be possible in all counties or judicial districts, but the framework provides flexibility to move defendants through the process. With the additional resources in the FY 2023 Governor's Budget Recommendation, KDADS can support additional counties or jurisdictions, particularly those with large numbers of competency cases, to apply additional resources moving through the criminal court process.

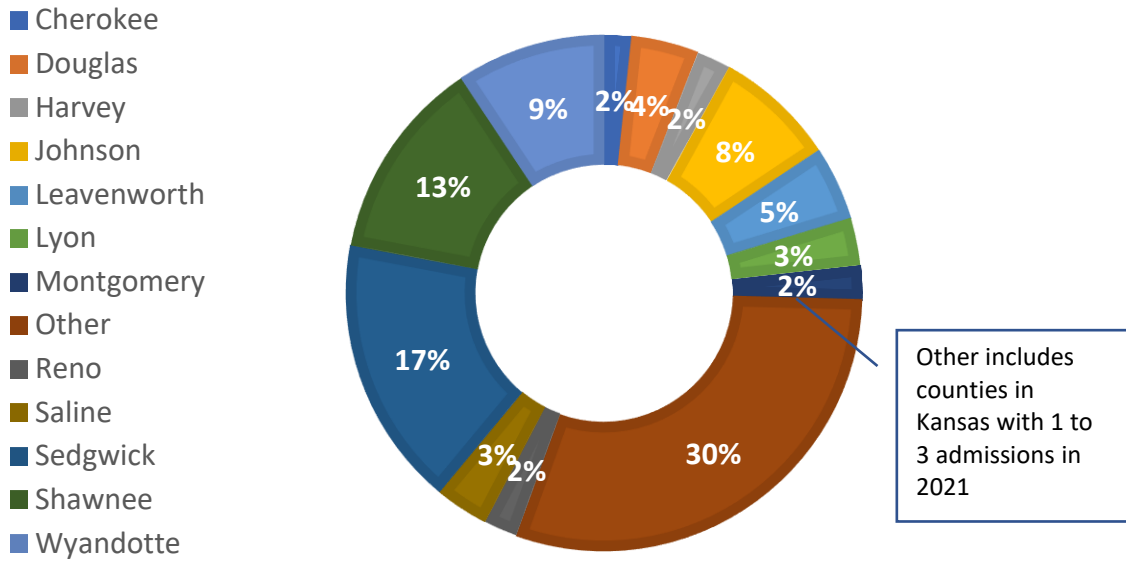
In our work with stakeholders, including representatives from the courts and law enforcement, requiring outpatient treatment for defendants with misdemeanor charges has been raised as a concern. Section 2 of HB 2697 changes the statute to specify that a defendant with a misdemeanor charge must have their competency evaluated or restored in an outpatient setting. The language in the bill says a court “shall” order defendants with misdemeanor charges to outpatient treatment. Stakeholders have suggested that giving courts the discretion to order either outpatient or inpatient treatment for a misdemeanor charge would provide flexibility for courts to place defendants in the most appropriate treatment based on their history or other factors in the criminal case. KDADS would entertain an amendment to the bill making that change.

KDADS also has received concerns about the ability of smaller counties to take advantage of mobile or community forensic evaluations. Some rural counties with small populations may not have law enforcement personnel or jail facilities that could support a mobile competency program. Defining the types of facilities that can do community evaluation or restoration based on the size of the county or capacity of the county resources including the jail, law enforcement, and the mental health centers, for example, could alleviate this concern.

As the chart below indicates, 60.0 percent of the defendants waiting for evaluation or restoration at LSH come from the six most populous counties. KDADS can target resources included in the Governor’s FY 2023 budget recommendation in those counties with the majority of defendants. Serving those defendants in their home communities will reduce the demand on LSH beds freeing space to serve defendants from other counties.

Admissions Jan-Dec, 2021	
Cherokee	4
Douglas	10
Harvey	5
Johnson	18
Leavenworth	11
Lyon	7
Montgomery	5
Other	71
Reno	5
Saline	8
Sedgwick	40
Shawnee	30
Wyandotte	22

SSP ADMISSIONS BY COUNTY JAN - DEC, 2021



Conclusion

HB 2697 makes an important change in the forensic competency statutes to allow for additional paths for defendants to be evaluated and restored to competency. With the additional resources in the Governor's budget, HB 2697 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 KDADS, LSH, and communities.