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**Testimony Regarding SB 374
Submitted by Aaron Breitenbach, Deputy District Attorney
On Behalf of Marc Bennett, District Attorney, Eighteenth Judicial District,
And the Kansas County and District Attorneys Association**

Honorable Chairwoman Warren and Members of the Senate Judiciary Committee:

Thank you for the opportunity to address you regarding Senate Bill 374. On behalf of Marc Bennett, District Attorney of the Eighteenth Judicial District, and the Kansas County and District Attorneys Association, I come to ask you to give local judges clearer authority to provide treatment to violent offenders with mental health issues while protecting the public.

As background, a defendant charged with a crime has many rights, including the right to make certain decisions about their case (how to plead, whether to go to trial, etc.). The law recognizes some defendants may not be competent to make these decisions due to mental or behavioral health issues. If a defendant is found not competent to stand trial, the law provides a process for "competency restoration," which can consist of education, prescribed medication, and forced abstinence from alcohol or illegal drugs defendants might otherwise use to "self-medicate" on their own. In most instances, competency restoration is achieved in a manner of weeks or months, and a case returns to the regular court process. In a minority of cases, competency cannot be restored within the proscribed period and involuntary commitment proceedings are initiated to place the defendant in a state hospital for longer, in-patient treatment. This process is separate from a mental disease or defect defense that may be raised at trial, once a defendant is found competent to return to the normal court process.

This bill does nothing to limit or change the options available to a defendant facing trial, rather, it seeks to:

- (1) clarify separate paths for how competency should be restored between misdemeanors, less dangerous felonies, and the most serious of offenses;
- (2) provide local judges who know the most about a defendant's conduct and history greater control over (and responsibility for) cases involving those who struggle to achieve competency to stand trial; and

- (3) strengthen existing law which makes clear those who commit the most serious offenses should remain in in-patient care until such time as they can be brought to trial, even if the cause of their incompetency is an organic injury or illness.

To understand why we are here today, here is an example of a pending case:

In the fall of 2021, a man walked up to a residence and asked the two children outside if their father was home. The children went inside and told their father someone was outside looking for him. Once the father stepped outside, the man allegedly shot the father in the chest. A witness outside heard the gun shots and went to intervene. As the witness neared where the shots were fired, the shooter allegedly walked up behind him and shot him three times. The father of the two children survived, but the witness who came to render aid died from his injuries, never knowing the person who shot him.

The alleged shooter was charged with first degree murder, attempted first degree murder, and other charges. Here is the procedural history that followed:

Jan. 2022—Defendant ordered to undergo a competency evaluation at request of his attorney (conducted in Sedgwick County through COMCARE)

March 2022—Defendant found incompetent and sent to Larned State Security Hospital (LSSH) for competency restoration

August 2023—Defendant ordered to continue treatment, as recommended by LSSH.

December 2023—LSSH reports defendant still not competent and not likely to become competent in the foreseeable future; Court directs the initiation of involuntary commitment proceedings under Chapter 59

April 2024—Involuntary commitment proceedings commenced in Pawnee County but then transferred to Miami County upon defendant's transfer to Osawatomie State Hospital (OSH)

May 2024—Care and treatment case dismissed in Miami County because court found (based on OSH report) defendant no longer met criteria as mentally ill person subject to involuntary commitment for care and treatment (because he was not likely to cause harm to himself or others in the current inpatient setting) but remained not competent to stand trial

August 2024—Case returned to Sedgwick County, where court ordered defendant to again undergo competency evaluation at OSH (where defendant remained)

November 2024—Defendant again ordered to resume competency restoration at OSH

March 2024—OSH reports defendant not competent and not likely to become competent in the foreseeable future; Court directs the initiation of new involuntary commitment proceedings under Chapter 59.

June 2025—Second care and treatment case dismissed in Miami County because court found (based OSH report) defendant no longer met criteria as mentally ill person subject to involuntary commitment for care and treatment (because he was not likely to cause harm to himself or others in the current inpatient setting) but remained not competent to stand trial

August 2025—Case returned to Sedgwick County, where court ordered defendant to undergo third competency evaluation at OSH (where defendant remained)

December 2025—Defendant again ordered to continue competency restoration at OSH

This proverbial wash cycle is the result of an apparent gap in the law (at least as currently applied). One can understand how persistent mental illness could cause someone to be indefinitely incompetent to stand trial. They should continue to receive treatment while protecting the community. However, how can a person who has allegedly killed, raped, or seriously injured another and persistently failed to understand the nature of the charges against them or assist in their defense be found unlikely to be a risk to themselves or others upon release? District courts are left with the untenable position of either dismissing the case and releasing alleged violent offenders without any consequence or treatment or re-starting the process of competency restoration.

Further, why is it only left to courts in Pawnee or Miami County to have the burden (and authority) to find whether defendants from across the State should remain committed for mental health treatment until such time as they can make informed decisions about their charges? In fairness to those jurisdictions, they are tasked with making decisions without all the information that may be known in the defendant's home community. The court is also arguably limited to the opinion of the chief medical officer of their respective facility, lacking context of prior cases or the unique facts of the present case.

Decisions of whether alleged criminals shall stand trial or have their charges dismissed to be released to their own recognizance (without any court-ordered treatment or medication regimen to address their mental health needs) should be made in the communities who know these defendants best and are most directly affected by them. These decisions should be based on more than how a medicated defendant behaves in a hospital setting. They should be informed by their full history (legal, medical, etc.) and the risk of harm posed by their release. A misdemeanor shoplifting case should not have the same path as a child rape or capital murder, as it does now.

The language proposed in this bill maintains every defendant's access to competency restoration and mental health treatment. If anything, these changes will lead to more mental health treatment being afforded to those who truly need it. It will also remove much of the incentive for a malingering defendant to present as someone who is incompetent to stand trial to avoid prosecution. Ultimately, it will provide a more tailored process for determining how each defendant's case should be handled.

Respectfully submitted,



Aaron Breitenbach
Deputy District Attorney