



STATE OF KANSAS
Tenth Judicial District

OFFICE OF DISTRICT ATTORNEY

STEPHEN M. HOWE, DISTRICT ATTORNEY

February 2, 2026

Senate Judiciary Committee
Attention: Chairwoman Kelli Warren
State Capitol, Room 419 - E
Topeka, Kansas 66612

Re: Senate Bill 374

Chairwoman Warren and members of the Senate Judiciary Committee:

Thank you for the opportunity to submit our written response in support of SB 374.

Over the last five years, we have seen a huge increase of individuals who suffer from serious mental illness and become involved in the criminal justice system. When this occurs, it can bring several Kansas statutes into play, including the involuntary commitment statutes found at K.S.A. 59-2945 *et seq.* and the competency statutes under the criminal code found at K.S.A. 22-3303. These statutes many times intersect when determining a criminal defendant's competency to stand trial.

If a criminal defendant has been evaluated and is found to be incompetent with little or no likelihood of restoration to competency, an involuntary commitment petition is filed. Once the involuntary commitment petition is filed, the court is limited to using the court evaluation and current condition of the patient to determine if they are a danger to themselves or others. The prior behavior of the patient or potential risks to the community upon release are not considered. There are cases throughout the State that fit within this scenario.

Johnson County case examples

In Johnson County, we have had eleven cases that fall under the scenarios contemplated by this bill, including three active cases that are level one or off-grid crimes. Two of these cases involve charges of aggravated indecent liberties with a child and are off-grid crimes. These cases deal with offenses committed by family members against a child under the age of 14. The third case deals with an individual who, while residing in a memory care unit facility, killed two other patients. There is no facility other than the state hospitals who will take him. Two cases have obtained a diagnosis of “organic” health issues, which have very little likelihood of restoration. This would include situations involving brain injury or dementia. Without the proposed amendments, all three of these defendants could have their cases dismissed and be released back into the community.

The current statutory structure contains loopholes that could result in releasing violent and mentally ill defendants back into our communities, which could result in tragic consequences to innocent Kansans. This could occur because the court is only allowed to evaluate whether a defendant is currently posing a threat to themselves or others. This bill corrects those issues. It balances the need to protect the public with the due process rights of the defendants.

The proposed legislation amends the Kansas criminal procedure regarding the evaluation and treatment of defendants found incompetent to stand trial, including provisions for inpatient and outpatient treatment, certification of competency, and involuntary commitment proceedings. The following modifications of the law have been made to provide that balance.

1. Role of the prosecuting attorney: The prosecuting attorney, not KDADS, will initiate involuntary commitment proceedings. The prosecuting attorney would have concurrent standing to participate in the commitment proceeding along with the county attorney where the hearing is held. The prosecuting attorney must include specific items in the petition including the court orders, the initial evaluation and reports on the defendant’s competency. (See pages 12 and 13 of the bill.)
2. Factors used in determining risks of harm to self or others: The bill provides additional factors the court shall consider in evaluating whether continued treatment is warranted. The bill allows the State to present evidence on the totality of the circumstances including, but not limited to, prior convictions or adjudicated and pending charges, prior criminal history. (See page 14 and 15 of

bill.) Adding these factors would also require KDADS to use these same factors to determine if a person is a danger to themselves or others.

3. Courts analysis during involuntary commitment proceeding. Instead of the limited scope, the court is now able to use the totality of the circumstances, including, but not limited to, prior convictions or adjudications and pending crimes allegedly committed by the defendant in determining whether the defendant is likely to cause harm to self or others. (See page 14 of the bill). For an off-grid felony, a nondrug severity level 1 person felony, or an attempt, conspiracy or solicitation, the defendant shall be deemed likely to cause harm to self or others. (See page 19 of the bill.)
4. Courts analysis after involuntary commitment proceedings. If the defendant has not been involuntarily committed or has been released from an involuntary commitment, but the court determines the defendant still lacks capacity, the court will evaluate the case in three different ways, depending on the level of criminal offenses brought by the state. (See pages 15 and 16 of the bill.) If the competency evaluation in the criminal case determines that the defendant is not competent and there is little likelihood of restoration to competency, the following options can occur.
 - a. For misdemeanor or non-person felonies charges the case will be dismissed without prejudice.
 - b. For person felonies, the court will notify parties that charges will be dismissed unless the prosecuting attorney objects within 14 days. If there is an objection, a hearing is held to determine if further evaluation and treatment is warranted.
 - c. For off-grid felonies or non-drug severity level 1 felonies, including attempts, conspiracies or criminal solicitations of such, the court shall set the matter for a hearing to determine the need for further evaluation and treatment.

At the hearing the court will hear evidence on whether further treatment is likely to be successful in restoring competency. If the court finds that the “probability still does not exist that the defendant will regain competency within the foreseeable future”, then the court examines the second prong of the analysis. That prong requires the court to determine if there is a compelling state interest in ordering future treatment. The court shall then consider the totality of the circumstances including the following evidence.

1. Whether the alleged offenses create a serious risk to public safety and
2. Whether the charge(s) includes allegations 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;
3. The extent of the impact of the alleged offense on public safety;
4. The number and nature of related charges pending against the defendant;
5. The length of potential confinement if the defendant is convicted;
6. The number of potential and actual victims or persons impacted by the defendant's alleged acts;
7. The prior history of the defendant including but not limited to criminal history, treatment history and history of violence;
8. 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 there is a compelling state interest based on public safety, then it can order further treatment even if restoration is unlikely. In instance involving a level one person felony or off-grid felony, the court must presume that the defendant "shall be deemed likely to cause harm to self or others" when making its decision. If the court finds a compelling state interest the defendant remains under care and the court case is suspended. The defendant is then evaluated every 90 days to determine if there is a change in their mental state.

This commonsense approach still provides due process protection for the defendants/patients through meaningful court hearings. At the same time, it provides needed changes in our competency laws that will protect our community from dangerous individuals who have demonstrated violent behavior.

We are asking for your support for SB 374.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen M. Howe", written over a horizontal line.

Stephen M. Howe
Johnson County District Attorney