OFFICE OF THE DISTRICT ATTORNEY
THIRD JUDICIAL DISTRICT OF KANSAS
Michael F. Kagay, District Attorney

February 4, 2026

TO: Chairwoman Warren of the Senate Judiciary Committee
FROM: Mike Kagay, District Attorney for Shawnee County
RE: Proponent Testimony for SB 374

Chairwoman Warren and Members of Committee:

I serve as the Shawnee County District Attorney, and as a member of the KCDAA board. I am offering my strongest possible support for SB 374, and hope that you give it favorable treatment.

Under the existing provisions of K.S.A. 22-3302 and 22-3303, a defendant who is charged with a felony and is found incompetent to stand trial is ordinarily committed to the state hospital so that their mental health issues can be treated, with the aim towards restoring them to competency. Criminal proceedings are halted and medical personnel have a total of 6 months to administer treatment. If competency cannot be restored, either the local prosecutor or the Kansas Department for Aging and Disability Services ("KDADS") is ordered to begin involuntary commit proceedings pursuant to the provisions of K.S.A. 59-2945, et seq., cited as the Care and Treatment Act for Mentally Ill Persons.

The Care and Treatment Act is designed for short-term treatment and stabilization of acute mental health problems. It was not designed to address defendants whose mental health issues are of a degree they cannot be treated and restored to competency using short-term methods. Persons subject to involuntary commitment are defined under the Act as (1) a person who suffers from a legally recognized mental illness; (2) because of that mental illness the person lacks capacity to make informed medical decisions; and (3) because of that mental illness, the person currently poses a danger to themselves or others.

For persons charged with severity level 5 felonies or higher, the defendant's lack of capacity to make informed medical decisions is presumed. However, for a defendant to continue to receive treatment under an involuntary commitment, the prosecution must prove by clear and convincing evidence the defendant (1) suffers from a legally qualifying mental illness and (2) they currently pose a risk of harm to themselves or others.

If involuntarily committed, a defendant will remain hospitalized until medical professionals determine treatment has stabilized a defendant's symptoms to a degree that the defendant no longer pose an immediate risk of danger to themselves or others. However, medical professionals at this point also render an opinion as to whether the defendant remains incompetent to stand trial.

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If the medical opinion is that, despite stabilization of symptoms, there is no substantial probability a defendant can be restored to competency to stand trial in the foreseeable future, the prosecution or the Court has no choice but to dismiss all charges. There are no statutory exceptions. There are no options for additional hospitalization. A defendant is released back into the community without long-term support or resources, and victims are left with nothing but anger, fear and frustration towards the criminal justice system.

This has happened in the Third Judicial District more than once, and has resulted in defendants continuing to commit high-level, violent offenses against the most vulnerable citizens. This is a recurrent problem not only in the Third Judicial District, but statewide. SB 374 is the first step to address this recurring issue affecting mentally ill defendants charged with the most serious offenses.

Under the proposed legislation, defendants charged with the most serious offenses under Kansas law and are deemed incompetent to stand trial with no substantial likelihood of restoration, additional hospitalization and treatment would be available. Defendants charged with crimes like rape, kidnapping, or murder would now be legally defined as dangerous to themselves or others, but would have the ability to challenge such classification in court.

The provisions of SB 374 provide the courts with additional legislative guidance in what evidence can and should be considered regarding a defendant's symptoms and history of mental illness and whether, because of that mental illness, a defendant remains a danger to themselves or others. The legislation provides for Due Process to a defendant through the notice of a hearing, appointment of counsel, and opportunity to be heard and present evidence. If a defendant remains a danger to themselves or others in the new calculus, hospitalization would continue, as opposed to the current scheme, which attempts short-term stabilization, but with little to no capability of creating long-term treatment plans.

Adoption of SB 374 addresses a number of urgent needs: Maintaining public safety; assuring mentally ill defendants receive the treatment and stabilization they need longer term; and allowing a better chance of holding the most serious offenders accountable for the most serious crimes.

For these reasons, I urge this Committee to adopt the modifications proposed by SB 374.

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