

### Neutral Testimony

## **SB 374 – requiring further consideration of evaluation and treatment during the course of competency proceedings for defendants charged with the most serious offenses**

### **Senate Committee on Judiciary**

**February 4, 2026**

Chairperson Warren and Members of the Committee,

My name is Scott Brunner, Deputy Secretary for Hospitals and Facilities representing the Kansas Department for Aging and Disability Services. I'm offering neutral testimony on SB 374 to describe the possible impacts on the forensic competency services offered at Larned State Hospital.

SB 374 makes several changes to the process of determining and restoring criminal competency. Under current law, competency evaluation and restoration treatment may be done on either an inpatient or outpatient basis. It permits courts to work with community providers, including Community Mental Health Centers (CMHCs) that have trained staff to complete evaluations and restoration treatment. KDADS contracts with Wheatstate Healthcare to reimburse CMHCs. The outpatient services reduce the need for criminal defendants to be admitted to the State Security Program at Larned State Hospital. Under current law, defendants are required to complete the mental health screen for involuntary treatment, and a criminal order is not included in the request for involuntary care and treatment. The decision to consider a defendant for civil commitment is based on the defendant's not being restorable and that they meet the psychiatric treatment criteria for other adults experiencing a mental health crisis to be admitted to a state psychiatric hospital. The law establishes standards for discharge of defendants involuntarily committed, including notification of victims and the prosecutor and court in the county where the criminal proceedings are pending.

SB 374 would impact the availability of inpatient competency beds. SB 374 removes the option for competency evaluation and treatment to be performed by community providers in most cases, which would add defendants to the wait list for inpatient treatment at Larned State Hospital and potentially increase the wait time for other defendants. As noted earlier, current law allows courts to work with community providers to provide these services on an outpatient basis. The table below shows the number of competency evaluations and restorations completed by CMHC in 2025.

	<b>Competency Evaluations Conducted 2025 (K.S.A. 22-3302)</b>	<b>Competency Restorations Completed 2025 (K.S.A. 22-3303)</b>
Bert Nash	53	3
Central Kansas	32	0
COMCARE	93	10
Crawford	7	8
Compass	18	4
Crosswinds	17	0
Elizabeth Layton	10	0
Family Service & Guidance	2	3

Four County	23	0
High Plains	4	0
Horizons	30	1
Iroquois	0	0
JOCO	68	0
Kanza	0	0
Labette	5	0
Pawnee	36	0
Prairie View	15	0
South Central	6	0
Southeast KS	9	0
Southwest Guidance	0	0
Spring River	2	0
Sumner	7	0
The Center for Counseling	13	0
The Guidance Center	26	0
Valeo	62	9
Wyandot	31	0
Total	569	38

SB 374 also requires submission of the criminal court order for commencement of involuntary commitment and the competency evaluations to accompany the petition for involuntary commitment for care and treatment pursuant K.S.A. 59-2945 et seq for any defendant who has been determined not competent or not restorable after six months of competency restoration treatment. The bill also adds a new provision which provides that if a defendant is found incompetent in their pending criminal case, the defendant shall be deemed to lack the capacity to make informed decisions concerning treatment until such time as the chief medical officer determines competency is restored.

These proposed changes would move more defendants from the forensic program into the involuntary commitment treatment program that the state psychiatric hospitals run based on the underlying criminal charge. The state psychiatric hospitals balance those admissions under current law, but there are a limited number of beds at Larned and Osawatomie State Hospitals that also have demands from the mental health system, community hospitals, and law enforcement.

Other changes in SB 374 would delay moving defendants out of inpatient beds at Larned State Hospital. SB 374 amends K.S.A. 22-3305 to provide standing to the prosecutor in the pending criminal case to appear and present arguments in the probate proceeding, including the power to call witnesses with information relevant to the proceedings. The statute is further amended to require the defendant involuntarily committed for care and treatment to remain in the treatment facility or institution until the probate court determines that additional evaluation and treatment is no longer warranted. The bill amends K.S.A. 22-3305 adding the requirement for a hearing pursuant to K.S.A. 59-2965(d), in which the probate court must consider the totality of the circumstances, including the defendant's past criminal history and pending crimes for purposes of determining if a defendant is likely to cause harm to self or others as defined by K.S.A. 59-2946. The court must consider the nature of the pending criminal proceedings to determine if additional evaluation and treatment are necessary when a defendant was not involuntarily committed or has been discharged from involuntary care and treatment pursuant to subsection (a) or (b) of K.S.A. 22-3305, and the probability still does not exist that the defendant will regain competency within the foreseeable future. If the defendant is charged with a misdemeanor or nonperson felony, the criminal court shall dismiss the criminal proceedings without prejudice, and the prosecutor shall provide victim notification. If a defendant is charged with a person felony, with the exception of specified high level felonies set forth in K.S.A. 22-3303, the criminal court will dismiss the criminal charge unless the prosecutor objects in writing within 14 days of receipt of the notice. If a defendant is charged with the specified high level felonies in K.S.A. 22-3303, the court shall set the matter for hearing to determine whether there is a compelling state interest to continue involuntary commitment for

evaluation and treatment, taking into consideration additional factors arising from the nature and severity of the pending criminal charges, public safety, length of potential confinement, prior criminal history, and the probability of defendant being restored to competency or mitigation of recidivism. If the court determines there is a compelling state interest, the defendant is ordered for further evaluation and treatment pursuant to K.S.A. 22-3305. If the court determines a compelling state interest does not exist, the criminal charges are dismissed without prejudice.

SB 374 also amends the definition of “likely to cause harm to self or others” set forth in K.S.A. 59-2946 (care and treatment act for mentally ill persons), to provide that any defendant who is charged with a high level criminal offense listed in K.S.A. 22-3303 is deemed “likely to cause harm to self or others”.

These provisions are likely to extend the amount of time defendants are in the competency process or move defendants that are not restored within 180 days indefinitely into involuntary treatment under the Care and Treatment statutes. The additional requirements for a commitment hearing in which the prosecuting attorney in the criminal case is given concurrent standing to argue and present witnesses in the probate proceeding. State psychiatrists and psychologists will be required to attend contested hearings for the court’s consideration of the additional factors and whether a compelling state interest exists to order additional care and treatment for defendants charged with serious felony offenses. SB 374 removes the requirement to complete a mental health screening before considering committing a defendant that cannot be restored to competency under the Care and Treatment Act for treatment at Larned State Hospital or Osawatomie State Hospital. SB 374 would impact the availability of inpatient care and treatment beds by requiring all defendants with felony charges to be committed to care and treatment until the court instructs otherwise, and by deeming defendants charged with a very serious person felony offense to be “likely to cause harm to self or others”.

SB 374 may add clarity when the criminal court should dismiss criminal charges without prejudice. However, the bill could impact the terms of the settlement agreement Kansas entered through the Glendenning Settlement to move defendants through the competency process.

Thank you for the opportunity to present these concerns about SB 374. KDADS is open to discussing the underlying concerns that generated SB 374 in the interest of maximizing available bed space, reducing wait time for admission, and speeding competency treatment for criminal defendants.

Respectfully,

Scott Brunner  
Deputy Secretary for Hospitals and Facilities, KDADS