



Senate Judiciary Committee
February 4, 2026
Senate Bill 374

Neutral Testimony of
Chance Berndt, Assistant Public Defender
BIDS Legislative Committee

Chair Warren, Vice-Chair Titus, Members of the Committee, and Legislative Staff:

My name is Chance Berndt. I am an Assistant Public Defender at the 10th Judicial District Public Defender Office in Olathe.

Thank you for the opportunity to provide neutral testimony regarding Senate Bill 374. The BIDS Legislative Committee is not taking a position on the bill, but we do have concerns about the bill's potential impact on our agency's ability to provide effective representation for our clients.

This bill is aimed at changing the procedure surrounding competency to stand trial, including the involuntary commitment proceedings for persons incompetent to stand trial in criminal cases in Kansas. Currently, a criminal defendant can be found "incompetent to stand trial" when – due to mental illness or defect – they are unable to "understand the nature and purpose of the proceedings against such person," or if they are "unable to make or assist in making such person's defense."¹ When a defendant has been found incompetent, they are ordered to undergo evaluation and treatment to see if their competency can be "restored," essentially to determine if further medical treatment can address the underlying mental health issues rendering a defendant incompetent. If a defendant is restored to competency, the criminal case resumes where it was left off. If a defendant is not restored to competency in six months (or if they are not believed to have the ability to ever regain competency), however, the State begins involuntary commitment proceedings under K.S.A. 22-3303.

Under current law, four things are required to be shown for someone to be considered a "mentally ill person subject to involuntary commitment for care and treatment." First, they must be a "mentally ill person" as defined in Kansas statute.² Second, they must "lack capacity to make an informed decision concerning treatment."³ This standard, which addresses someone's ability to understand or make decisions regarding their own medical treatment, is a different standard entirely than competency. Third, they must be "likely to cause harm to self or others."⁴ Finally, their underlying medical diagnosis must be something that is likely to respond to further medical treatment. Some

¹ K.S.A. 22-3301(A)

² K.S.A. 59-2946(e)

³ K.S.A. 59-2946(f)(2)

⁴ K.S.A. 59-2946(f)(3)

diagnoses which are not responsive to further treatment (such as intellectual disability or organic mental disorders) cannot be the sole reason for a person’s involuntary commitment.⁵

A few of the changes proposed in this bill are relatively minor. These include the clarification of language directing the prosecuting attorney for the pending criminal case to commence certain proceedings; and the inclusion of the inchoate offenses of attempt, solicitation, and conspiracy for cases involving certain crimes specified under the existing law.

Other additions proposed under this bill would constitute a *major* shift to our existing framework – especially when viewed in the aggregate. These major changes include:

- A provision that would automatically deem defendants to lack capacity to make informed decisions concerning treatment if they have been found incompetent to stand trial, without further consideration of individual circumstances;
- Provisions allowing a court to consider the “totality of the circumstances” when adjudging whether a defendant is likely to cause harm to self or others; and automatically deeming defendants accused of certain crimes as likely to cause harm to self or others;
- Most significantly, a provision instituting a new process where a court may hold a hearing and, pursuant to a “compelling state interest,” order further evaluation and treatment for a defendant – thereby restarting the involuntary commitment process anew.

These provisions would allow a court to substitute its own findings for those that are traditionally made by medical professionals; would relieve the State of much of its burden when requesting for a person to be involuntarily committed; and would allow a Court to keep certain persons in an endless “loop” of further treatment and evaluation without ever resolving their criminal case.

It is difficult to predict how such sweeping changes would affect our state mental health facilities and our criminal justice system, but there are probable outcomes. With more cases “looping” through extended treatment, the already-significant wait time for new defendants to undergo treatment and evaluation will likely rise. Local jails and state hospitals would bear the burden of detaining defendants through these extended waiting periods. Criminal cases involved in this process will take longer to resolve. Constitutional and statutory challenges to such a framework are likely to arise, and – as with all protracted litigation – costs will increase at a commensurate rate.

Thank you for the opportunity to provide testimony regarding the BIDS Legislative Committee’s concerns. This bill seeks to make it easier to involuntarily commit or confine someone against their will – merely because of an allegation – before anyone has had their day in court. We appreciate the committee’s careful consideration of all efforts to remove Kansans’ due process protections, which this bill could do by broadening the criteria for involuntary commitment and expanding the court’s role in determining a person’s course of medical treatment.

Chance Berndt
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⁵ K.S.A. 59-2946(f)(1)