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MEMORANDUM

To: Senate Committee on Judiciary

From: Office of Revisor of Statutes

Date: February 4, 2026

Subject: Bill Brief on SB 374

Senate Bill 374 requires further consideration of evaluation and treatment during the course of competency proceedings for defendants charged with the most serious offenses.

Section 1 amends K.S.A. 22-3303, the statute relating to commitment of incompetent defendants. Current law provides that for defendants charged with a misdemeanor or felony outpatient treatment may be ordered. These provisions are removed such that for defendants charged with a felony, a commitment to the state security hospital or its agent or a state hospital or its agent shall be conducted on an inpatient basis. Notification will be required to be made to the prosecuting attorney for the pending criminal proceeding instead of the prosecuting attorney in the county where the criminal proceeding is pending (this change is made throughout the bill). If the defendant has not attained competency to stand trial within six months after the date of the commencement of treatment, the court shall order the prosecuting attorney for the pending criminal proceeding to commence involuntary commitment proceedings. This removes the current law provision authorizing the secretary for aging and disability services to commence such proceedings.

A new subsection (g) is added to provide that whenever involuntary commitment proceedings have been commenced, the petition shall (1) be accompanied by the court order to commence proceedings, the initial evaluation to determine competency and the reports pertaining to whether the defendant has a substantial probability of attaining competency in the foreseeable future, (2) not be required to include a state screen or a signed certificate. The written evaluation shall include (1) a report on the reason for admission or case filing, (2) the current mental status of the defendant, (3) the medications that the defendant is currently taking, (4) the likelihood of the defendant causing harm to self or others, including an analysis of whether the defendant

understands the seriousness of the charges alleged, and (5) any diagnosis of the defendant. In such proceedings, having been found incompetent in the pending criminal case, the defendant shall be deemed to lack capacity to make informed decisions concerning treatment until the chief medical officer overseeing the defendant's treatment determines that competency is restored.

Section 2 amends K.S.A. 22-3305, the statute governing procedure when the defendant is not committed or is to be discharged. The provision referencing the secretary for aging and disability services commencing involuntary commitment proceedings is removed and replaced with a provision saying that the prosecuting attorney for the pending criminal proceeding shall have standing, concurrent with the prosecuting attorney for the county in which the hearing is held, to appear, call witnesses and offer argument. Subsection (d) is added to provide that to determine whether a defendant is likely to cause harm to self or others during the course of such proceedings, the court shall conduct a hearing in accordance with K.S.A. 59-2965(d) and consider the totality of the circumstances, including, but not limited to, prior convictions or adjudications and pending crimes allegedly committed by the defendant. Subsection (e) provides that if the defendant has not been committed or has been released from such commitment but the court determines that a probability still does not exist that the defendant will regain competency within the foreseeable future, the court shall consider the nature of the pending criminal proceedings to determine if additional evaluation and treatment are necessary and (1) if the defendant is charged with a misdemeanor or nonperson felony, the court shall dismiss the criminal proceedings without prejudice and the prosecutor shall provide victim notification; or (2) if the defendant is charged with a felony that is not an off-grid or SL 1, the court shall provide notice to the parties that unless the prosecuting attorney objects in writing within 14 days, the criminal proceedings shall be dismissed without prejudice. If the prosecuting attorney objects, the court shall set the matter for hearing within 14 days to determine whether further evaluation and treatment is necessary. If the defendant is charged with an off-grid or SL 1 felony, the court shall set the matter for hearing to determine whether further evaluation and treatment is necessary.

At a hearing held under this section, the prosecuting attorney shall have the burden of establishing there is a compelling state interest in ordering further evaluation and treatment by a preponderance of the evidence. The defendant shall be represented by counsel but need not be present. In making a determination, the court shall review the seriousness of the pending charges and consider (1) whether the alleged offenses create a serious risk to public safety and the bill contains criteria to evaluate that factor, (2) the prior criminal, treatment and violence history of

the defendant, and (3) any evidence of whether further treatment is likely to be successful in restoring competency or reducing recidivism. If the court finds a compelling state interest in ordering further evaluation and treatment, the court shall proceed in accordance with this section. If the court finds there is no such compelling state interest, the case shall be dismissed without prejudice, and the prosecuting attorney shall provide victim notification.

Section 3 amends K.S.A. 59-2946, the definition section in the care and treatment act for mentally ill persons. The definition of "likely to cause harm to self or others" is amended to provide that a defendant who is subject to involuntary commitment proceedings and charged with an off-grid or SL 1 through 3 felony shall be deemed "likely to cause harm to self or others."