

Office of the
WYANDOTTE COUNTY
DISTRICT ATTORNEY



DISTRICT ATTORNEY
Mark A. Dupree, Sr.

29TH JUDICIAL DISTRICT OF KANSAS

Senator Kelly Warren, Chair
Senate Judiciary Committee

Proponent Testimony – SB 374

Chairwoman Kelly and members of the Senate Judiciary Committee:

Thank you for the opportunity to provide testimony in support of Senate Bill 374.

SB 374 completes the competency process in criminal cases. Right now, when a defendant in a criminal matter has been involuntarily committed pursuant to K.S.A. 22-3303 and the Chief Medical Officer finds that they are no longer a danger to themselves or others; and that they are not competent to stand trial in the underlying criminal case, the case must be dismissed pursuant to K.S.A. 22-3305. Under the current law, if a person cannot understand the charges against him/her and cannot assist in the defense of the charges, the case cannot proceed and thus releasing the individual back into the community.

We are requesting a remedy for the above-described problem and SB 374 would be that remedy. It allows for commitment of individuals charged with the most serious violent offenses until they obtain trial competence and affords due process during the commitment proceedings. It creates a new hearing process where the prosecutor may present evidence of a compelling state interest to continue treatment for defendants charged with serious violent person felonies. At the hearing, the court will consider the seriousness of the charges, public safety concerns, and the defendant's treatment history. For less serious charges—such as misdemeanors or nonperson felonies, the court will dismiss the case without prejudice if the defendant is unlikely to regain competency in the foreseeable future.

Again, this bill is reserved for only defendants charged with the most serious crimes—such as off-grid felonies, nondrug severity level 1–3 felonies, or attempts/conspiracies to commit such offenses—who pose a risk of harm to themselves or others.

Unfortunately, this is the current situation in several counties, including my own. Right now, defendants have gone through the competence process on capital murder cases, murder cases, rape, and child sex crimes only to have a finding that the defendant is not a danger to themselves or others and that they are not competent to stand trial. That puts the individuals back on the street with no accountability or treatment; or they go through the process continuously inviting civil litigation. I don't think this body intended this outcome.

The Kansas Supreme Court has affirmed the Legislature's broad constitutional authority to create laws that protect the public and provide treatment for individuals with mental illness who may be dangerous. As stated in *In re Care & Treatment of Hay*, 263 Kan. 822, 833 (1998), it is well within the Legislature's authority to "adopt statutory programs to confine and treat people who might be dangerous to themselves or others and who suffer from some mental ailment."

For these reasons, I respectfully urge your support of SB 374.

I appreciate your time and consideration.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads "M.A. Dupree, Sr." The signature is written in a cursive style.

Mark A. Dupree Sr.
District Attorney