

March 2, 2012

The Honorable Pat Colloton, Chairperson
House Committee on Corrections and Juvenile Justice
Statehouse, Room 167-W
Topeka, KS 66612

Re: Testimony Proposed in Support of House Bill No. 2497

Dear Representative Colloton:

In what follows, I am providing the substance of the testimony I intend to provide at the hearing currently scheduled on Tuesday, March 6, 2012 concerning the above Bill.

Introduction of Myself

I am a psychologist initially trained in clinical psychology and subsequently trained in clinical neuropsychology and forensic psychology. Over the past 11 years I have been a partner in a multidisciplinary private practice group (Heritage Mental Health Clinic) that formed out of the Menninger Clinic after it became known that their intent was to move to Houston, TX to become a part of the Baylor medical organization. Within this group I have provided both clinical and forensic evaluations.

Purpose of My Testimony

My purpose in being here today is to support the proposed revision of the statute concerning competence to stand trial that is contained in House Bill No. 2497.

Basis for My Support

The Bill provides a basis for what attorneys and judges need to know about a defendant's competence to support due process. The present statute falls far short of that and below the Dusky standard established in the Federal courts and followed in most other states.

As the statute currently stands, only fundamental understanding of legal roles, the charges faced and potential penalties is required. Such understanding is part of only one prong of the Dusky standard. The other two require capacity to reason about one's case and to appreciate the legal issues sufficiently to assist one's attorney in defense. With the current statute, mentally ill and mentally defective defendants can be viewed as having the illusion of competence, or as having been provided an illusion of restoration to competence through education. However, the factors that interfere with their reasoning and appreciation of the issues have not been identified to provide a basis for attempts at genuine restoration.

Evaluation of these additional factors cannot be carried out simply by a clinical evaluation or by someone not trained to provide evaluation of such factors. It requires a forensic evaluation that uses assessment instruments that have been created by forensic psychologists to directly address these factors. In addition, it

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requires someone who has the set of skills necessary to conduct such an evaluation using these assessment instruments. In a forensic evaluation, there is a radical shift away from the boundaries associated with clinical evaluations. The Defendant is not the evaluator's patient and thus the evaluator is not the Defendant's advocate. The evaluator's client is the court and the Defendant's advocate remains the defense attorney.

Basic elements of a forensic evaluation in this area include:

- (1) objectivity – without bias toward either defense or prosecution stakes in the outcome and thus preferably not confounded with participation in an agency that sees restoration of competence as its sole objective;
- (2) a clear basis for linking findings to competence as defined by statute;
- (3) methods for identifying the sources of any lack of competence, to provide a basis for attempts at restoration; and
- (4) methods for assessing whether or not a Defendant may be malingering lack of competence.

The forensic and psychological assessments for providing this sort of evaluation currently exist. An excellent example of one of the forensic assessment protocols is the MacCAT (MacArthur Competence Assessment Tool), which has been available since approximately 1999.

Process to Support Implementation of a New Standard

A different system is available to accomplish these evaluations more effectively, more quickly and less expensively than the present system. For the model evaluation protocol that I envision, I would expect completion available within county jails with a report available within 2-3 weeks. The system requires evaluators specially trained for expertise in such evaluations and who are certified in their expertise. Training for such certification can be accomplished through Washburn Law School by attorneys, law professors and forensic psychologists, with costs for training paid through continuing education fees from the evaluators seeking certification. This is the sort of system that has worked successfully in other states.

Currently we have a broken system built upon an insufficient statute. House Bill No. 2497 provides a basis for correcting this situation.

In closing, I hope that this information is helpful to you in forming an opinion about the merits of the Bill before you for your consideration.

Respectfully,

George Athey, Jr., Ph.D., ABPP (Clinical)
Clinical Psychologist and Neuropsychologist,
Forensic Psychologist