



COMMITTEE ON CORRECTIONS AND JUVENILE JUSTICE
March 6th, 2012

Thank you for the opportunity to speak before you, my name is Nick Wood. I am the Systems Change Coordinator and Lead Investigator at the Disability Rights Center of Kansas (DRC). The DRC is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for people with disabilities. As such, DRC is the officially designated protection and advocacy organization for Kansans with disabilities. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansans with disabilities.

In a climate of fears of further budget cuts to programs in Kansas, the DRC has continued investigation and review of the policies and practices the State of Kansas uses to administer these important programs so that we may continuously monitor and zealously advocate for the rights of Kansans with disabilities.

Avoid “Push and Pull” & Higher Utilization of Inpatient Beds over Competency

If a person cannot assist their attorney in their own defense, it is important to ensure they are not then punished for their lack of competency. Most of the changes we see in the bill have to do with the ‘process’ for establishing competency or non-competency. While we support fair determinations of competency to stand trial, we want to see them based on consistent professional and clinical standards. If this bill were enacted, we think it would result in wider variation across the state in how our laws relevant to competency to stand trial are applied. We have seen examples where our laws around *competency*, *restoration to competency*, and *civil commitment* were used to criminalize a person’s disability. We know first-hand that variation in how these laws are applied can result in unnecessary, and even unconstitutional, confinement in an institution.

Olmstead

In 1999, the US Supreme Court decided that "unjustified isolation of individuals with disabilities is properly regarded as discrimination based on disability" and therefore a violation of rights guaranteed under the Americans with Disabilities Act (ADA). Since the Olmstead Decision, the US Department of Justice (DOJ) and President Bush's New Freedom Commission have reinforced the spirit of the court's decision by further delineating the responsibilities of every state to ensure the legal rights of its citizens with disabilities in Institutions.

A legal complaint against states filed by the Department of Justice, have defined what an Olmstead violation looks like. It is important to stress that these are the arguments of the DOJ, but we expect these are some of the standards that Kansas will be held accountable to if it finds itself in a position similar to other states that have been subject to costly intervention from courts after being sued by the DOJ. The DOJ is aggressively enforcing the ADA and the right to live in the community.

A few excerpts from the DOJ's complaint that we feel are relevant to Kansas:

"The State segregates hundreds of individuals with ... disabilities in institutions that are not the most integrated setting appropriate to their needs, and fails to provide adequate community supports and services to individuals who are discharged from the institutions or who are at risk of institutionalization."

"Typically, the State does not meaningfully consider a resident for a more integrated setting unless the resident or their family/guardian proactively requests a more integrated setting."

"Most residents do not proactively request a more integrated setting because the State does not properly educate residents on what community resources are available, or the possible benefits of community placements."

"While confined in the institution, residents do not receive appropriate treatment to support their eventual discharge to a less restrictive setting in the community."

"Residents who have been confined for many years are not actively reassessed for opportunities to move to a less restrictive setting appropriate to their needs."