

Approved: April 30, 2012

(Date)

**MINUTES OF THE HOUSE CORRECTIONS AND JUVENILE JUSTICE  
COMMITTEE**

The meeting was called to order by Chairperson Pat Colloton at 1:30 PM on Friday, February 17, 2012 in 144-S of the Capitol.

All members were present

Committee staff present:

Jackie Lunn, Committee Assistant  
Lauren Douglass, Legislative Research  
Robert Allison-Gallimore, Legislative Research  
Sean Ostrow, Office of the Revisor of Statutes  
Jason Thompson, Office of the Revisor of Statutes

Conferees appearing before the Committee:

Larry McReil, J.D., Chief Public Defender, North Central Region  
David R. Mouille, Vice Chair, Kansas Board of Forensic Examiners  
Adam Hall, General Practice Attorney, Lawrence  
Nick Wood, Disability Rights Center of Kansas  
Nathan Eberline, Kansas Association of Counties

Others in attendance:

See attached list.

Chairperson Colloton called the Committee' attention to **HB 2534–Amending requirements and penalties for failure to report death or disappearance of a child and interference with law enforcement**, and opened the floor for consideration of the bill. She called on Sean Ostrow, Office of the Revisor, to explain the amendment on the bill (Attachment 1)

***Representative Kinzer made a motion to move the bill out favorably. Representative Moxley Seconded.***

A discussion followed regarding the proposed amendment. ***Representative Pauls made a motion to approve the amendment. Representative Kelly seconded. The motion carried.***

The discussion continued with ***Representative Brookens making a motion to adopt the second amendment and between lines 22 & 23 remove “such person know”. Representative Goodman seconded. Motion carried.***

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The discussion continued on the bill with *Representative Pauls making a motion on Paragraph A and B and line 16. Representative Wolf seconded. Motion carried.*

*Representative Smith made a motion to pass **HB 2534** out favorably, as amended and with the technical cleanup by the Revisor, for passage. Representative Moxley seconded. Motion carried.*

Chairperson Colloton opened the hearing on **HB 2707—Requiring judicial review of release of mentally incompetent defendants** and called on Sean Ostrow, Office of the Revisor of Statutes, to explain the bill. Mr. Ostrow stated **HB 2707** would create several new procedures regarding the discharge of defendants who have been involuntarily committed to treatment facilities. Heads of treatment facilities would be required to provide written evaluation reports of defendants to courts. In turn, courts must hold expedited hearings within 30 days of receiving the reports. At the hearings, courts would determine whether or not a defendant is likely to cause harm to self or others. Before defendants are discharged, heads of treatment facilities must provide notices to the district courts that the defendant is ready for conditional release or discharge. Upon receiving this notice, district courts must hold subsequent hearings to determine whether the defendant shall be conditionally released or discharged. Courts must order the defendant to undergo a mental evaluation by an evaluator designated by the court. If conditional release is ordered, courts may order the defendant to continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery.

Chairperson Colloton introduced Larry McRell, J.D. Chief Public Defender, North Central Regional Office located in Junction City, Kansas, to give his testimony as a proponent of the bill. Mr. McRell provided written copies of his testimony for the committee and staff, (Attachment 2). He stated he represented defendants accused of committing felony offenses in a five-county region. He told of some of his experiences of representing those defendants who have been involuntarily committed to treatment facilities and discharged. In closing, he stated the state cannot ignore the burgeoning threat created by an inadequate civil commitment process, the inadequate competency process, and the related mental health evaluations. We cannot ignore the segment of our society comprised of mentally ill people who pose a danger to themselves and others. There are simply too many incalculable costs that families and communities will suffer as the result of irresponsible inaction. This legislation is not a panacea, but it can be the first step in improving the state's response to alleged criminal acts committed by mentally ill people.

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Chairperson Colloton introduced Dr. David R. Mouille, Vice Chair, Kansas Board of Forensic Examiners, to give his testimony as a proponent with amendments for the bill. Dr. Mouille provided written copies of his testimony for the committee and staff, (Attachment 3). He stated he is in support of **HB 2707** and it does solve some present problems. It has the potential both for increasing the safety of our public and for improving the treatment of our mentally ill defendants, but he stated has some concerns. His first concern is with lines 34 and 35 on page 1, where the bill requires a report including “a current assessment of the defendant’s likelihood to cause harm to self or others....” The gravity of the impact within an involuntary commitment proceeding cannot be minimalized for two reasons: 1) research shows courts and judges seldom disagree with the professional’s report; and 2) one of the possible consequences of the professional’s report is that the defendant may be institutionalized for an indefinite period. You also should be aware the current body of scientific knowledge supporting evaluations for danger to self and others is quite sophisticated, complex, and extensive, and the training and credentialing process for the professionals performing such exams is quite advanced. He suggested to add specific language to lines 34 and 35, language more consistent with scientific knowledge, language that lays out more detail about what the report should contain and about who should perform the evaluation. His second concern is with lines 37 through 39 on page 3. At that point, the bill reads, “The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the defendant was committed.” This is unrealistic and dangerous, and it is an unfair reversal of Kansas history. He feels the bill is unrealistic because the county has no money to finance the evaluation. **HB 2707** creates a method of financing that runs quite parallel to the funding method for sexual predator examinations: it requires the counties to pay. In the past, counties that could not afford the exams began considering whether or not they should bother filing involuntary commitments, and prosecutors and defense attorneys now complain they cannot do their jobs because they receive substandard professional reports. The bill is unfair because lines 37 through 39 admit the State is abandoning responsibility, for the safety of its citizens, and for the treatment of its mentally ill and dangerous people. In closing, he suggested there is another method for financing an evaluation to determine whether a defendant is dangerous to self and others. He went on to say this method could be implemented in Kansas without increasing taxes and without grants. **HB 2707** is as good a place as any to consider alternative financing. The state has the money, the

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knowledge, the professionals, and the tools to make it work. The legislature needs to insist it be done.

Chairperson Colloton called the committee's attention to the "written only" opponent testimony of Adam Hall, a general practice attorney from Lawrence, Kansas, ([Attachment 4](#)) and she introduced Nick Wood, Disability Rights Center of Kansas, to give his testimony as an opponent of the bill. Mr. Wood provided written copies of his testimony for the committee and staff, ([Attachment 5](#)). Mr. Wood stated, as written, the bill would subject 'incompetent' defendants to burdensome release standards which could result in life-long commitments. A decision by the United States Supreme Court in *Jackson v. Indiana* barred the indefinite commitment of people found not competent to stand trial solely on the basis of their continued incompetence. Other decisions have found it is unconstitutional for a State to require an involuntarily committed person to bear the burden of proving that he is not a danger. DRC believes the bill would violate these decisions and would render unconstitutional our statutes governing the commitment and release of defendants found not competent to stand trial. In *Jackson v. Indiana*, the Court held that it is a violation of a person's rights under the Constitution to equal protection if a state's procedures for discharge from a treatment facility are more stringent for a criminal defendant who has been held incompetent to stand trial and is unlikely to obtain competence, than an individual who has otherwise been involuntarily committed under a state's civil commitment laws. The *Jackson* court and several other court decisions have also held that indefinite commitment of a criminal defendant solely on account of his lack of capacity to stand trial violates due process. A defendant cannot be held more than a reasonable period of time necessary to determine whether there is substantial probability that he will attain competency in the foreseeable future. He went on to say **HB 2707** puts the burden on a criminal defendant, by clear and convincing evidence, to prove he is not a danger to himself or others and should be discharged. K.S.A. 59-2966, applicable to involuntary civil commitment, puts the burden on the petitioner to prove "by clear and convincing evidence" that the proposed patient is mentally ill and subject to involuntary commitment. The burden of proof is reversed under **HB 2707**, making it a violation of equal protection under *Jackson*. **HB 2707** then potentially leads to a person being committed for an indeterminate amount of time to a facility without an involuntary civil commitment.

A discussion followed.

Chairperson Colloton introduced Nathan Eberline, Kansas Association of Counties, to give his testimony as an opponent of the bill. Mr. Eberline provided written copies of his testimony for the committee and staff, ([Attachment 6](#)). He stated **HB 2707** is an expansive legislative

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proposal, which would overhaul criminal procedures for incompetent defendants. While the Kansas Association of Counties applauds the efforts of this committee in addressing the important issue of mental illness, we strongly oppose passing a sizeable unfunded mandate to the counties. The bill makes liberal use of county resources including the introduction of multiple hearings, an expansive notification process, and county-provided care through security hospitals. The consequence is a sizeable increase in personnel time devoted to shepherding defendants through the new procedural steps. In addition to the increased time and potential expense of the process, there is the potentially limitless requirement that counties house defendants in security hospitals,—limited beds and decreased funds. The combination is a bill with unfunded mandates. This will severely impact county budgets and spur the introduction of new local taxes. Again, the ideas behind this bill are noble, but if the State deems this to be important and necessary, please fund it through the State’s budget. As currently written, this measure passes a significant policy obligation onto local tax-payers. We urge this committee to vote against **HB 2707** and vote against unfunded mandates.

Questions and answers followed.

Chairperson Colloton called the committee’s attention to the “written only” opponent testimony of Karrie Bacon, Interim Executive Director, Kansas Council on Developmental Disabilities, (Attachment 7).

The Chair called for any others to speak or testify to **HB 2707**. There were none, so she closed the hearing and moved the committee’s attention to **HB 2506—Issuance of motorized bicycle licenses to habitual violators**, for consideration.

The Chair called on Sean Ostrow, Office of the Revisor of Statutes, to explain the balloon amendment on the bill. Mr. Ostrow provided written copies of the balloon amendment for the committee and staff, (Attachment 8). He explained that on Page 2, line 14, add “amendments thereto, or a second or subsequent violation of K.S.A.” and on line 20 to add “,has not had a test refusal or test failure or alcohol or drug-related conviction, as those terms are defined in K.S.A. 8-1013, and amendments, thereto, in the last five years, has not been convicted of a violation of subsection (b) of K.S.A. 8-1568, and amendments thereto, in the last five years”.

***Representative Wolf made a motion to pass HB 2506 out favorably. Representative Meier seconded.***

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A lengthy discussion followed.

**Representative Wolf made a motion to adopt the balloon amendment on Page 2, line 14. Representative Roth seconded. Motion carried.**

**Representative Goodman made a motion to adopt the balloon amendment on Page 2, line 20. Representative Brookens seconded.**

A discussion followed.

**The Chair called for a vote on the motion on the floor for the amendment on Page 2, line 20. Motion failed.**

A discussion followed.

***Representative Wolf made a motion to pass HB 2506 out favorably as amended. Representative Goodman seconded.***

A discussion followed.

***Representative Roth made a motion to reconsider the amendments on the bill. Representative Wolf seconded.***

A lengthy discussion continued.

**Representative Pauls made a motion to keep working on the bill. Representative Goodman seconded. Motion carried.**

Chairperson Colloton adjourned the meeting at 2:45 P.M. with the next meeting scheduled for February 20, 2012 at 1:30 P.M. in room 144-S.

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