

Approved: March 6, 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 Tuesday, March 6, 2012 in 144-S of the Capitol.

All members were present except:

Melanie Meier

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:

David Mouille, Ph. D.

Larry McRell, J.D., Chief Public Defender, North Central Regional Office, Junction City, Kansas

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

Colin Thomasset, Policy and Research Analyst, Association Community Mental Health Centers of Kansas, Inc.

Nick Wood, Systems Change Coordinator and Lead investigator, Disability Rights Center of Kansas

Others in attendance:

See attached list.

Chairperson Colloton announced to the committee this was the night for the play at the Topeka Women's Correctional Facility and they were to meet at the Celtic Fox at 5:30 PM for dinner and then go to the correctional facility where they were expected by 7:00 PM.

The Chair recognized ***Representative Brookens who made a motion, having voted on the prevailing side, to reconsider on SB 159–House Substitute for Substitute for SB 159 by Committee on Corrections and Juvenile Justice – Searches of persons on probation, parolees and persons on postrelease supervision.*** Representative Smith seconded.

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Representative Brookens provided written copies of an amendment on **SB 159** for the committee and staff, (Attachment 1). Representative Brookens explained that he had contacted Ed Klumpp, Kansas Association of Chiefs of Police, Kansas Sheriffs Association and Kansas Peace Officers, and they reached an agreement that they feel will keep the bill's intent and be agreeable to all. Representative Brookens explained the amendment which would change the language that for all other officers other than parole officers would have to have a reasonable suspicion before they could have a search.

A short discussion followed and Chairperson Colloton stated they would take up the consideration of the Brookens' amendment on Monday or Tuesday of next which will give the committee members an opportunity to review the amendment.

Chairperson Colloton opened the hearing on **HB 2497—Amending procedures concerning a defendant's competency to stand trial** and called on Sean Ostrow, Office of the Revisor of Statutes, to explain the bill. Mr. Ostrow provided the committee and staff copies of the changes of the original bill, (Attachment 2). He stated the bill concerns crimes, criminal procedure and punishment; relating to competence of defendants to stand trial; repealing K.S.A. 22-3301 and 22-3306 and K.S.A. 2011 Supp. 22-3302, 22-3303 and 22-3305. He went on to say the most substantial change in HB 2497 would require the development of a new treatment unit in the Larned State Hospital-State Security Hospital program where forensic treatment is provided. The bill would also reduce the timeframe to complete competency evaluations from 60 days to 21 days.

Chairperson Colloton introduced Larry McRell, J.D., Chief Public Defender, North Central Regional Office 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 3). He stated the views he expressed are not necessarily the views of the State Board of Indigent Defense Services, my clients, or my staff; the testimony is an expression of my personal and professional views. He went on to say **HB 2497** provides for an improved process that aids courts in reaching decisions regarding a defendant's competency to stand trial and is cost-effective. He told of some of his experiences representing defendants that suffered from mental illness. In closing, he stated many times it is a criminal act that triggers the first public view of an individual suffering from a mental disease, disorder, or defect. A defendant's strange behavior is soon observed by the arresting officers, correction officers, defense counsel or prosecutors. And as a result, one or all the parties to criminal action requests what is widely believed to be the most often requested forensic evaluation—is the defendant competent to stand trial? Even though this bill is too late to help some of his previous defendants he has

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represented, the bill will legislatively enhanced public safety and at the same time ensure that others that are mentally ill be abandoned in prison or in residential communities. He urged the committee to support the bill.

A short question and answer session followed.

Chairperson Colloton recognized Mr. Rick James, Clay County Attorney, who wished to speak to the bill since one of the defendants Mr. McRell represented murdered Mr. James' cousin. Mr. James did not provide written testimony. He stated the present system was not working and people were dying. This bill was a start to address the issues. He is in support of the bill. In closing, he stated if this bill had been in place much earlier his cousin would not have been murdered by a mentally ill offender.

Chairperson Colloton introduced George Athey, Jr. PH. D., ABPP, Clinical Psychologist and Neuropsychologist, Forensic Psychologist. Dr. Athey provided written copies of his testimony for the committee and staff, (Attachment 4). He stated his 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. 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. 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 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. Currently we have a broken system built upon an insufficient statute. **HB 2497** provides a basis for correcting this situation. In closing, he stated he hoped that this information is helpful to the committee in forming an opinion about the merits of the bill before you for your consideration.

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Chairperson Colloton introduced David Mouille, Ph. D., to give his testimony as a proponent of the bill. Dr. Mouille provided copies of his written testimony for the committee and staff, ([Attachment 5](#)). Dr. Mouille stated he is a psychologist licensed to practice in the State of Kansas. I am here to support the advancement of **HB2497**. This bill is extremely important for the efficient operations of our courts, for the safety and welfare of our citizens, and for the justice and care given to our mentally ill and dangerous people. This legislative action will demand that mental health professionals produce forensic reports matching some minimally acceptable standard. Our courts, at the moment, are plagued with deficient and bad reports, and this is causing problems. He sighted one judge's remarks, after receiving a report from a mental health professional. "When I received this report and read the report I was shocked at what I read, and that's based upon my own personal knowledge of this young man. If I have not indicated before on the record I will today, that I have been involved with him since he was a minor in Child in Need of Care matters, and if I recall correctly I believe there may have been one or two juvenile offenses, but eventually in the Child of Need of Care action. So I have over the years seen many reports, and read many diagnoses and I have observed him in the courtroom before. I've observed numerous outbreaks in this courtroom, one of which basically resulted in an extremely heavy table being tipped over. And I can go on, and on, and on, much as Mr. McRell has stated in the background, and his mother has stated, so when I read the report and they make various conclusions and various statements in here that I know from personal observation, but reading numerous reports from SRS, from doctors, from everybody else in the state system involved totally disagree, I have to – I have no faith in this report. I have no confidence in its conclusions, simply because factual information is not correct. It's not accurate. And I assume that having accurate information is important in having an accurate forensic evaluation. I know all of this information was available to them, if not through counsel, through Pawnee, or even other sources, if they didn't ask. Based upon the evidence today,...I...find Mr. Weaver is incompetent..."

Chairperson Colloton called the committee's attention to the "written only" proponent testimony of Adam Hall, General Practice Attorney, Lawrence, Kansas, ([Attachment 6](#)), and Michael Kaye, Washburn Law School, ([Attachment 7](#)).

Chairperson Colloton introduced Barry Wilson, Riley County Attorney, to give his testimony as an opponent of the bill. Mr. Wilkerson provided written copies of his testimony for the committee and staff, ([Attachment 8](#)). Mr. Wilkerson stated he is here today on behalf of the Kansas County and District Attorneys Association in opposition to **HB 2497**. He went on to say the overall impact of this bill will be a stalling the criminal justice; substantial increase in court hearings and increased costs due to the cost of employing experts to conduct unnecessary, in

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probably most cases; and additional competency evaluations. In closing he stated there are issues, however, this bill addresses the wrong target, or as my late grandfather would put, “we are fishing in the wrong hole”. The problems begin with the lack of funding under the care and treatment code and the lack of facilities for long-term inpatient treatment. Patients are released who suffer severe mental issues and who cannot be managed in the local community. They are temporarily stabilized at Osawatomie State Hospital, released and then quit taking their medication within a short period of time. In the more severe cases these individuals commit serious crimes. The Riley County Attorney’s Office prosecuted such an individual for the rape of an elderly woman. The KCDAA respectfully ask that the committee not take any further action on this bill.

Chairperson Colloton introduced John M. Settle, Pawnee County Attorney, to give his testimony as an opponent of the bill. Mr. Settle provided written copies of his testimony for the committee and staff, (Attachment 9). He stated that he is appearing on behalf of his self as a Kansas prosecutor. He is opposed to **HB 2497** because it will not provide any benefit for the citizens of Kansas. Instead it will ultimately reduce public safety and put more citizens of Kansas at risk.

He went on to say this proposed bill is not appropriate policy for the state of Kansas and further that Kansas courts do not find any criminal defendants competent to stand trial unless a particular defendant meets the strict standard set by years of Kansas appellate case law and well established statutory procedures. In closing, he stated a side effect of such dramatic changes in criminal procedures is confusion which will result in an additional burden for Kansas trial courts, appellate courts and the communities which these case result from which obviously increase the costs associated with the proposed changes and the burden to every citizen in Kansas. He urged the committee to realize this bill is unnecessary and will put the safety of every Kansas citizen at risk and is obviously bad public policy.

Chairperson Colloton introduced Colin Thomasset, Policy and Research Analyst, Association Community Mental Health Centers of Kansas, Inc., to give his testimony as an opponent of the bill. Mr. Thomasset provided written copies of his testimony for the committee and staff, (Attachment 10). He stated the Association does not support **HB 2497**. He went on to say that this bill has raised numerous concerns for them, and they feel that it is a step in the wrong direction. If passed, this bill would create the unintended impact of placing more strain on State Mental Health Hospital (SMHH) beds at precisely the same time that we are experiencing a critical shortage of inpatient resources. For a number of years, our SMHHs have reached their maximum capacity and are often significantly over census on a continual basis, and sometimes at very alarming rates. As documented in the fiscal note prepared by the Division of the Budget, this bill would require development of a new treatment unit at Larned State Hospital – State

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Security Hospital (SSH) program where forensic treatment is provided. As of January 24, 2012, there were 34 individuals awaiting admission to SSH and the average length of wait was 66 days. The total cost of developing a new treatment unit would cost over \$3.2 million SGF.

They fear that if this bill passed, and funding is not allocated, resources will have to be put into the forensic units and pulled away from civil commitment and voluntary commitment beds in order to meet the timelines. Currently in FY2012 year to date, the adult inpatient civil and voluntary commitment beds are over census 99% of the time. The bill brings up the matter of qualifications on Page 2, Sec .4. The phrases “sufficient professional education” and “sufficient forensic knowledge” are not adequately defined. This would lead to less standardization across the system, as courts will have the authority to arbitrarily determine who might have this sufficient education and forensic knowledge to perform evaluations. It will not serve the courts or defendants for the law to require the evaluator to have a Ph.D. or some certified forensic training as CMHCs have been doing the bulk of these evaluations in the community. There is currently training offered and provided to the CMHCs psychologists that perform the evaluations. We do not need to have fewer persons performing these evaluations. It is typical that CMHCs are able to perform the competency evaluations within the current timeframe, and usually much quicker. The bill also brings up the possibility of contesting the evaluation findings on Page 4, Sec. 10. This change would impose substantial new obligations on the courts. Could this lead to "contesting until we get what we want" type thinking as well? In closing, he stated they believe it would be unwise to implement the changes in **HB 2497**. In your deliberations, please consider the cost that would be incurred with the passage of this bill, and the severe impact it would have on inpatient resources.

Chairperson Colloton introduced Nick Wood, Systems Change Coordinator and Lead investigator, 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 11). He stated 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. In closing, he discouraged the committee to not support the bill.

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A question and answer session followed.

Chairperson Colloton called for any others wishing to speak or testify to the bill. There were none, so she closed the hearing **on HB 2497** and adjourned the meeting at 3:10 with the next meeting scheduled for March 7, 2012 at 1:30 in room 144 S.

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