

Legislative Testimony

In **Support** of SB448
Senate Committee on Judiciary
February 13, 2024

| **WRITTEN ONLY** |

Dear Chairman Wilborn and Members of the Committee,

My name is Rashane Hamby, and I serve as the Director of Policy and Research at the American Civil Liberties Union of Kansas. The ACLU of Kansas, a nonpartisan, non-profit organization with over 35,000 supporters statewide, is dedicated to preserving and strengthening the civil rights and liberties of every Kansas resident.

We support Senate Bill No. 448 because it would statutorily establish a process for assessing the mental competency of individuals accused of crimes in municipal courts. The bill introduces important provisions to protect the rights of individuals with mental health issues facing municipal charges, potentially facilitating needed care.

However, even as we support the improvements to a broken system that SB448 makes, we must note that the bill does not touch on other important aspects of the intersection of pretrial detention and mental health.

Pretrial Incarceration: We believe that pretrial incarceration for individuals with municipal charges should be exceedingly rare. Although the bill presents an opportunity to reevaluate practices around detaining individuals with mental illness pretrial, particularly when they are unable to participate in their defense due to competency issues, it does not address the chronic overuse of pretrial incarceration. Pretrial incarceration as currently practiced in Kansas harms public safety, harms communities, and frequently infringes on the rights and liberties of Kansans.

Systemic Delays: SB448 focuses exclusively on creating a process for assessing mental competency in the municipal court system. However, the related process in state courts is currently fundamentally broken and the bill does nothing to address that fact. The comparable state system is characterized by such extremely prolonged wait times for competency evaluations and treatment—sometimes exceeding 11 months—that the constitutional rights of individuals are infringed upon. This is because the Supreme Court has found that “indefinite commitment of a criminal defendant solely on account of his incompetency to stand trial does not square with the Fourteenth Amendment’s guarantee of due process.”¹

¹ Jackson v Indiana

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Although the ACLU writes in support of the aspirations of SB448, we urge the committee to take this opportunity to make an even more substantial impact on this issue. We urge the committee to consider amendments that would reduce the backlog of competency determinations at the statewide level—not simply institute a process for evaluation at the municipal court level—and so ensure that all Kansans are afforded the protections mandated by the Constitution.

Thank you

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