

MEMORANDUM

**TO: REP. PAT COLLOTON, CHAIR
COMMITTEE ON CORRECTIONS & JUVENILE JUSTICE**

**FROM: LARRY T. McRELL, J.D., CHIEF PUBLIC DEFENDER
NORTH CENTRAL REGION**

RE: HOUSE BILL 2707

DATE: FEBRUARY 15, 2012

Thank you very much for the opportunity to address your committee in support of House Bill 2707. I am the Chief Public Defender for the North Central Regional Office in Junction City, Kansas. We represent defendants accused of committing felony offenses in a five-county region. The views I express 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.

Earlier this week many of us celebrated Valentine's Day, a tradition observed annually on February 14. Just over four years ago on February 14, 2008, Mr. Thomas James went to work and he never made it home to his family. He died a tragic death, murdered in an apartment in Leonardville, Kansas. Mr. James was repeatedly stabbed with a kitchen knife and the scene reflected a savage attack; it was grim and bloody.

On Valentine's Day, February 14, 2008, Mr. Howard Barrett did not return to his home and family either. Before his morning was over, Mr. Barrett was arrested for the murder of Mr. James. Unreasonably seeing a threat to himself (repeatedly diagnosed as a paranoid schizophrenic), Mr. Barrett woke up and grabbed a knife; he stabbed Mr. James more than thirty times. Regrettably, Mr. James was unable to escape or defend himself. Tom James died in Howard Barrett's apartment. After the death, Mr. Barrett calmly called 911, and waited for the police to arrive. Among other ramblings that made little, if any, sense Mr. Barrett later cautioned others that there were 40-some Japanese soldiers in a field near Leonardville.

Today, Mr. Barrett remains in the custody and care of the State of Kansas at Osawatomie State Hospital. No healthcare professional has ever found that Mr. Barrett is malingering or feigning illness. He remains severely mentally ill and tries to communicate with me from time-to-time. At certain points during the past four years, Mr. Barrett has believed that either I am the deceased Mr. James or that I helped him stop Mr. James from this threatening actions in his apartment (Mr. James was present in the apartment as part of an inspection for bugs). Mr. Barrett has not been tried and convicted because he remains incompetent and unable to assist his lawyer in making a defense. You should notice Mr. Barrett remains incompetent because he cannot assist in his defense; Mr. Barrett does have adequate knowledge of the court process, but he cannot use his knowledge to assist in his defense.

Mr. James and Mr. Barrett deserved a better fate, both were claimed as casualties of a process that failed to assess whether Mr. Barrett was a danger to himself or others. It

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should be a lesson learned. To paraphrase a reminder of the important of lessons learned, those who choose not the study history are doomed to repeat history's failures, hopefully this bill can help minimize the chance that others will pay with a loss of a loved one, a mother, father, sister, brother, wife, husband or child. Unfortunately for Mr. James and Mr. Barrett, the authorities did not heed a case history warning that was well-known, but ignored and apparently given little attention between 2003 and 2008. Mr. Barrett had practiced violence previously and he had been acting erratically for some time prior to the murder of Mr. James.

Briefly, in 2001, Mr. Barrett was arrested, but never convicted of attempted murder of a neighbor. He tried to shoot a neighbor who he believed was threatening, even though there was no basis for the perceived threat; Mr. Barrett had a gun and shots rang out while the neighbor fled. This neighbor made it safely home and so did Mr. Barrett. Afterwards, an investigation ensued and Mr. Barrett was charged with, but never convicted of attempted murder or any lesser offense.

Just as is the case now, in 2001 Mr. Barrett was determined to be incompetent and not likely to achieve competence. And, just as now, he was placed at Osawatomie State Hospital. However, Mr. Barrett was subsequently released from Osawatomie State Hospital in 2003. Just prior to his release, Osawatomie State Hospital advised that Mr. Barrett "remained incompetent to stand trial and will be incompetent in the foreseeable future." Subsequently, Osawatomie State Hospital initiated and completed discharge planning for Mr. Barrett. Without notifying the attorneys, the Hospital released him *one week* after legal authorities had completed an involuntary commitment process for Mr. Barrett. Why did Osawatomie ignore the legal decision for involuntary commitment?

Mr. Barrett eventually settled in Leonardville, Kansas, and supervision was provided by the local community mental health center. Mr. Barrett, though, was not well and it is believed that monitoring and supervision was minimal (his living conditions suggest he was living with the limitations of his mental illness—he had minimal food in the refrigerator and his "bed" was a bed-frame with blankets placed in between the frames). It is readily apparent that there were gaps in the criminal and civil process and those gaps must be bridged now more than ever.

The law did not honor Mr. James, nor did it honor Mr. Barrett. We can do better and it requires an improved process with criteria that hold those responsible accountable to a legal process that does not let the unthinkable happen again. House Bill 2707 is a step in the right direction and an improvement that grants greater authority to the courts to rigorously assess whether a citizen of Kansas is a danger to themselves or others. This should be the beginning of a journey to a safer Kansas and it can be done without stigmatizing and taxing the indigent and mentally ill; it is important that qualified and credentialed professionals render care and treatment without stripping them of their civil rights and certain inalienable rights under the Constitution.

By no means is the wrenching story of Mr. James and Mr. Barrett an isolated incident that is unlikely to re-occur. If anything, the pressure is mounting that there will be a string of incidents that will be more than Kansas can handle.

As I testify today, I know that there are dwindling resources and funds to identify, treat, monitor and supervise those suffering from mental illness. At the same time there is an increasing number of military members who have seen combat in Afghanistan and Iraq and are committing suicide or murder, and a significant number of them are suffering from traumatic brain injury and/or post-traumatic stress disorder. In fact, I currently represent an active duty Army member accused of felony-murder on New Year's Day (the shooting occurred at approximately 3:45 a.m. on January 1, 2012).

Just like other stories of a veteran healthcare system gone awry, so goes this story. Briefly, Mr. Daniel Parker deployed twice during a three-year period. His deployments were each 12 months and he experienced the death of comrades during both tours. Mr. Parker's story is as compelling as Mr. Barrett's (based upon symptoms, Mr. Parker may suffer from PTSD/TBI and/or other co-occurring disorders). All the tell tale signs that should have been warning signs went untreated. Likewise, the story of the young victim who lost his life when Mr. Parker allegedly discharged a firearm and one of the bullets shattered the victim's skull parallels Mr. James, the victim was not engaged in any criminal conduct.

Sadly, just two weeks after the New Year's Day killing with which Mr. Parker is charged, there is still another newsworthy incident in Riley County that has echoes of Mr. James and Mr. Barrett (nothing inherently criminal on the part of the victim to provoke an attack as again a victim who was standing outside celebrating New Year's Eve). Just 14 days after Mr. Parker is charged with a murder, a 26-year old Manhattan man, Mr. Brown is accused of attempting to murder two men taking him home from Sunday church. Mr. Brown has been initially described as "worse than Barrett"—whether he is or not is yet to be determined, but he is awaiting a competency evaluation. Just like Mr. Barrett, Mr. Brown waited with the two victims for the police to arrive. (Mr. Brown's case also highlights the difficulties of mental health issues as it is just not the local community that suffers when processes are inefficient or ineffective—after the defendant was incarcerated he was involved in two more incidents against correction officers and one of the injuries required immediate medical attention and a blood draw from the defendant to determine exposure to infectious diseases.)

In conclusion, we 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 our response to alleged criminal acts committed by mentally ill people. Our slow and under-resourced responses to mentally ill people who commit criminal offenses perpetuates the

problems of finding a proper and Constitutional balance for those who look like Mr. James and Mr. Barrett.

How many times are we willing to wait (and only then react) for someone to commit a crime, arrest them, subject them to competency examinations, either deem them competent or determine that they are incompetent, give them minimal care and treatment, and then release them without an adequate evaluation for or a judicial decision establishing that they pose no risk to themselves or others?

Not moving forward is moving backward with respect to the tragedy of Mr. James and Mr. Barrett; honor Mr. James in death, honor his surviving family members in life and make certain that the law honors the rights of Mr. Barrett—pass this bill. Do not stop, though, with this bill, collaborate and coordinate with other stakeholders examining the intersection between competency, criminal law and civil commitments. It has always been a “known known” that Mr. Barrett is suffering from mental illness, and forcing competence in order to try, convict, and imprison him is nothing more than cruel and unusual punishment.

Again, thank you for this opportunity to address you committee. I am most appreciative of your efforts to improve the process and to create safer and more secure communities while protecting those that are least among us. Collaboration and coordination of criminal and civil actions involving competency, mental illness and criminal responsibility must continue. We must more forward.

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