

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 2497
DATE: MARCH 6, 2012

Thank you very much for the opportunity to address your committee in support of House Bill 2497. 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.

I support House Bill 2497; it provides for an improved process that aids courts in reaching decisions regarding a defendant's competency to stand trial and is cost-effective. Had House Bill 2497 been in effect at the time of the two cases mentioned below it is more likely than not a murder and rape could have been prevented. (By mentioning two cases I am not suggesting the effect would have been limited to the two cases. The cases below are mentioned only for illustration.)

"Seriously, Doctor, how is it possible that the truth never gets through to her. I mean she's in a mental institution, right?...Sanity's not a choice, Marshal. You can't just choose to get over [insanity]." Shutter Island, 2010, Martin Scorsese, Director/Producer.

Like insanity, "incompetence to stand trial" is not a choice made by a defendant; moreover, any attempts to restore competence may fail as the defendant may be incapable of getting over "it" (incompetence). When a defendant or individual is incapable of "choosing" competence we should not lay aside the incompetent citizen nor should we jeopardize the public when we know an individual is incompetent to stand trial. House Bill 2497 improves existing law by requiring that the courts obtain forensic evaluations from qualified medical or psychological experts and it sets standards for improving the responsiveness and timeliness of competency evaluations. It should streamline the process and negate the need to obtain multiple "competency to stand trial" evaluations because earlier evaluations did not adequately address the substantive needs of the parties.

Whether a defendant is competent largely depends upon his or her ability to responsibly appreciate reality. Unfortunately, competent and incompetent defendants may believe that the most important reality is their own reality. While personal reality has great appeal, it should not be practiced for obvious reasons. Practicing personal reality can have disastrous consequences, particularly when practiced by the mentally ill.

In 2008, Howard Barrett believed that the most important reality was his reality. And, despite "red flag" warnings of impending and increasing problems, his reality resulted in the violent

House Corrections and Juvenile Justice
Committee
2012 Session
Date 3-6-12
Attachment # 3-1

stabbing and senseless, tragic murder of Thomas James, who left home on the morning of February 14, 2008, just to do his job as an exterminator and instead was surprised by Mr. Barrett's unprovoked attack in Leonardville, Kansas. This attack was not so much different than seven years earlier when Mr. Barrett was living in Junction City, Kansas and a neighbor of Mr. Barrett's arrived at his residence in 2001 only to have Mr. Barrett attempt to murder him with a handgun. Mr. Barrett was found incompetent and did not stand trial for the attempted murder. In each case, Mr. Barrett's most important reality was his own reality and it led him to acts of violence. Among other things, Mr. Barrett suffers from paranoid schizophrenia. He was not adequately supervised nor was he properly treated in 2008, perhaps for a period of five years as Mr. Barrett was released from custody in 2003, he was deemed incompetent and he would not obtain competence in the foreseeable future.

Just like Mr. Barrett, Qynton Mathews believed in his own reality and violently raped a 70+ year-old woman six times in less than two hours in 2009. He was not adequately supervised nor was he properly treated. Again, just as Mr. Barrett, Mr. Mathews was familiar to the criminal justice process--when he was released from prison in 2006 for a sex offense local authorities were warned that he was suffering from dementia. Less than three months after his release from prison Mr. Mathews was charged with committing person felonies against his elderly grandmother. However, he was deemed incompetent to stand trial and the case was dismissed. Two years later Mr. Mathews was arrested for rape. Eventually, and after still more evaluations to determine whether Mr. Mathews was competent to stand trial, he was deemed competent to stand trial for the rape, aggravated robbery and aggravated battery of the 70 year-old victim and is now in prison, most probably for the rest of his life.

The criminal courts need and want the professional opinions of forensically trained and experienced medical and/or psychological experts to aid in making a legal decision about whether a defendant is competent to stand trial. A thorough, fact-based analysis with supporting documentation is critical to a due and just process.

At a minimum, "Competency to Stand Trial" requires that a defendant understands the nature and purpose of the legal proceedings against him or her and be able to effectively cooperate with counsel in his or her defense. To understand the proceedings, a defendant must be able to comprehend the charges against him or her and the penalties if convicted. He or she must also have a level of understanding of courtroom procedure and the functions of those who participate in it. To cooperate with counsel, he or she must be able to plan a legal strategy, be able to recall and relate pertinent facts and events, including his or her motives and actions at the time of the offense, and be able to testify in his or her behalf and to challenge prosecution witnesses.

Due process in a criminal court requires something much more than the presence of the defendant. On a daily basis defendants and their counsel appear in criminal courts, most defendants understand the nature of the proceedings and can easily assist their attorney in representing them. Yet, there are other defendants who are subject to a criminal complaint who do not understand the proceedings nor are they capable of assisting in their own defense. Defendants may suffer from flashbacks, they get lost going home, and they do not remember places they have been to numerous times. Other defendants suffer from severe memory loss, or are haunted "24/7" by the unpredictable symptoms of post-traumatic stress disorder. Still others

are plagued by uncontrolled fits of anger or rage and are suicidal. There are still others who suffer from all of the maladies just mentioned.

We should not lay aside the incompetent citizen nor should we risk the safety and security of our residential communities without a fact-based meaningful assessment that a defendant is either competent, incompetent but his or her competence can be restored or is incompetent and competence cannot be restored in the foreseeable future. Forensic competency evaluations should be conducted by qualified medical and/or psychological professionals who have the training, experience and degree of skill necessary to evaluate defendants for competence to stand trial and then report their findings to the criminal court. House Bill 2497 establishes criteria for competency evaluations; emphasizes the qualifications, training and experience of the evaluators and sets time standards to reduce the wait times for the evaluations.

When competence to stand trial evaluations have lacked meaningful analysis the public suffers from violent acts and the public's confidence in justice suffers. And so do defendants suffer--some may have been deemed competent to stand trial on questionable evaluations and then sentenced to jail or prison where they encounter an inherently coercive relationship with other inmates. Whether living in a residential community or the inherently coercive culture of jail or prison, incompetent individuals, without proper and consistent intervention regress and suffer from increasingly more serious symptoms and problems, including memory loss, hallucinations, intense anxiety, and loss of touch with reality. (Indeed, it should be mentioned that often times jails are ill-equipped to deal with the mentally ill and they are likewise in danger as well.)

In conclusion, many times it is a criminal act that triggers that first public view of an individual suffering from a mental disease, disorder or defect. A defendant's strange behavior is then soon observed by arresting officers, correction officers, defense counsel or prosecutors. And, as a result, one or all the parties to the criminal action requests what is widely believed to be the most often requested forensic evaluation--is the defendant competent to stand trial? House Bill 2497 answers that Constitutional question, too late for Thomas James, but hopefully the bill will legislatively enhance public safety and at the same time insure that Howard Barrett and others similarly situated will not be abandoned in prison or in residential communities. Fix public policy now, or fix it later at a greater cost, in lives and money.

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.

Larry T. McRell, J.D., Chief Public Defender
North Central Regional Public Defender Office
715 N. Washington
Junction City, Kansas 66441
(785) 238-2154

HOUSE BILL 2497
LARRY McRELL, J.D.