

February 18, 2014

The Honorable Lance Kinzer, Chairperson  
House Committee on Judiciary  
Statehouse, Room 165-W  
Topeka, Kansas 66612

Dear Representative Kinzer:

**SUBJECT:** Fiscal Note for HB 2584 by House Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2584 is respectfully submitted to your committee.

HB 2584 would amend the procedures for determining if a defendant is mentally competent to stand trial. If there are reasons for believing a defendant is incompetent, the defendant, the defendant's counsel, or the prosecutor may request or the court may order a competency evaluation. A court-appointed evaluator must possess sufficient professional education, clinical training, and forensic knowledge.

Evaluations for defendants who are in custody must be completed and reports returned to the courts within 21 days of the defendant's admission to the state security hospital, residential facility, or jail. The time period may be extended but cannot exceed 45 days. To facilitate evaluation, defendants charged with felonies may be committed to the state security hospital and defendants charged with misdemeanors may be committed to state, county, or private residential facilities. Evaluations may also be conducted while a defendant is in jail. Evaluations for defendants who have been granted pretrial release must be completed and reports returned to the court with 30 days. Courts must hold hearings within 30 days of receiving the reports. Pretrial release defendants could not be involuntarily confined or committed because a competency evaluation has been ordered unless confinement is necessary for the evaluation to be conducted. In this case, confinement must be for the minimum length of time necessary to complete the evaluation. Courts could involuntarily commit defendants who refuse to cooperate.

Any party may move to contest the findings of the evaluation reports with seven days of receiving the reports. Courts must hold hearings within seven days of receiving the motion to contest the findings. For defendants who have been confined for examination or are in custody, hearings must be held within seven days of receiving evaluation reports. If the court does not find by a preponderance of the evidence that the defendant is incompetent, criminal proceedings would resume. If the court finds that the defendant is incompetent or that competence depends

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on continuation of treatment, courts must consider issues relating to treatment to affect competence including undergoing treatment at a residential facility, transferring to another residential facility, or ordering outpatient treatment services.

A defendant's continuing incompetence must be periodically re-determined by the court. If the continuing incompetency report concludes that there is a substantial probability of the defendant attaining competency in the foreseeable future, courts must order the defendant to remain in an appropriate residential facility or outpatient treatment program until competency is attained or six months, whichever occurs first. If the report concludes that the defendant has attained competence, courts must conduct a competency hearing within seven days of receiving the report. If the defendant has not obtained competency within six months of the date of the original commitment or the report concludes that there is not a substantial probability that the defendant will attain competency within the foreseeable future, the court shall order involuntary commitment proceeding to begin.

| Estimated State Fiscal Effect |                |                      |                |                      |
|-------------------------------|----------------|----------------------|----------------|----------------------|
|                               | FY 2014<br>SGF | FY 2014<br>All Funds | FY 2015<br>SGF | FY 2015<br>All Funds |
| Revenue                       | --             | --                   | --             | --                   |
| Expenditure                   | --             | --                   | \$3,259,556    | \$3,259,556          |
| FTE Pos.                      | --             | --                   | --             | 51.50                |

According to the Kansas Department for Aging and Disability Services, the most substantial change in HB 2584 would require the development of a new treatment unit in the Larned State Hospital-State 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. Of those 34 individuals awaiting admission to SSH, three individuals had been ordered for competency treatment. On that date, SSH was providing competency treatment to 25 security patients under commitment. These three pending admissions, as well as the other 31 pending district court referrals on the waiting list, could be treated immediately if a new unit were opened. The bill would also reduce the timeframe to complete competency evaluations from 60 days to 21 days. This change would require the addition of qualified forensic evaluators to complete the evaluations within the new statutory timeframe. The estimated cost of the new unit includes salary expenditures of \$2,673,701 for 51.50 FTE positions and other operating costs of \$585,855 for the first year and \$437,409 for subsequent years. The additional other operating expenditures in the first year include one-time costs for supplies, equipment and furniture. More costs could result from the expanded definition of mental incompetence and specialized training in HB 2584, but cannot be developed until after additional details are specified.

The Office of Judicial Administration states that HB 2584 would impose substantial new obligations on the courts for additional hearings and expedited hearings. This would increase the time spent by judges and non-judicial personnel conducting, docketing, and processing hearings.

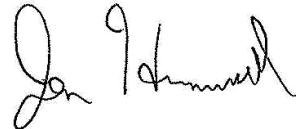
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However, it is not possible to predict the number of cases in which competency would need to be determined and how complex and time-consuming the hearings would be. Therefore, a precise fiscal effect cannot be determined. Any fiscal effect associated with HB 2584 is not reflected in *The FY 2015 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Hummell".

Jon Hummell,  
Interim Director of the Budget

cc: Mary Rinehart, Judiciary  
Jackie Aubert, DCF  
Melissa Wangemann, KAC  
Brad Ridley, KDADS