



EQUALITY ♦ LAW ♦ JUSTICE

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To: Senate Committee on Judiciary

From: Lane Williams, Deputy Director—Legal Division

Date: February 12, 2020

Re: Testimony in Support of SB 333 Regarding the Procedure for Certain Incompetent Defendants under K.S.A. 22-3301, *et seq.*

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Mr. Chairman and members of the Senate Judiciary Committee, I am writing to you regarding SB 333 on behalf the Disability Rights Center of Kansas (DRC). I am unable to testify at the hearing on this bill, but I wish to submit a written statement in support of the bill for your consideration.

DRC is a public interest legal advocacy agency, part of a national network of federally mandated and funded organizations legally empowered to advocate for Kansans with disabilities. We are the officially designated protection and advocacy system for Kansans with disabilities. DRC is a private, 501(c) (3) nonprofit corporation, organizationally independent of both state government and disability service providers. As the federally designated protection and advocacy system for Kansans with disabilities, our task is to advocate for the legal and civil rights of persons with disabilities as promised by federal, state and local laws.

I was a member of the Kansas Judicial Council Advisory Committee which met to review the criminal procedure when a defendant is found not competent to stand trial, is not likely to regain competency, and is not a “mentally ill person subject to involuntary commitment for care and treatment” as defined in K.S.A. 59-2946(f)(1).<sup>1</sup> As the Judicial Council’s testimony explains, our committee met over several months and concluded that

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<sup>1</sup> K.S.A. 59-2946(f)(1): "Mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e), who also lacks capacity to make an informed decision concerning treatment, is likely to cause harm to self or others, and whose diagnosis is not solely one of the following mental disorders: Alcohol or chemical substance abuse; antisocial personality disorder; intellectual disability; organic personality syndrome; or an organic mental disorder.

the statutory framework could be improved to be more equitable to defendants who are not competent due to a disability other than mental illness but who still may face indefinite confinement in a state mental health hospital which can provide no treatment. In drafting the revisions, we were mindful of the need to strike a balance with public safety concerns. The Disability Rights Center believes the amendments reasonably strike that balance.

The Judicial Council's testimony thoroughly explains the new procedure so I will not repeat what has been said already. I only wish to add the following comments for consideration:

1. The state will avoid the vastly more expensive cost for essentially providing board and care for incompetent defendants for years at the state hospitals.
2. Providing better services and supports to incompetent defendants in less restrictive settings will not cost as much as an indefinite stay at the state hospital and will still provide supervision to address public safety concerns.
3. Although long-term expenditures would be required to develop and maintain services and supports<sup>2</sup> some community residential providers of Medicaid Home and Community Based Services (HCBS) may have expertise to provide supports, including appropriate supervision, for some incompetent defendants. This would help offset some costs.
4. Adopting the amendments will allow the state to more efficiently use its limited bed capacity at the state hospitals for individuals with mental illness in need of care and treatment but who have to wait for admission due to a lack of beds. In some cases, these individuals are waiting in county jails at public expense after being picked up on the street due to behavior related to their mental illness.

In conclusion, DRC believes adopting the amendments makes fiscal sense in the long term, provides a more fair process for incompetent defendants, and reasonably balances public safety concerns.

Thank you for your time and consideration.



Lane Williams  
Deputy Director—Legal Division

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<sup>2</sup> Division of the Budget Fiscal Note dated February 5, 2020, p. 2.