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MEMORANDUM

To: Senate Committee on Judiciary
From: Jason Thompson, Senior Assistant Revisor of Statutes
Date: February 13, 2020
Subject: Bill Brief for SB 333

Senate Bill 333 modifies criminal procedures relating to a defendant's competency or incompetency to stand trial.

Section 1 amends K.S.A. 22-3301, the statute defining when a person is incompetent to stand trial under the Kansas code of criminal procedure. The bill does not change the current law except to add a cross-reference to definitions of “likely to cause harm to self or others” and “mentally ill person” found in the care and treatment act for mentally ill persons.

Section 2 amends K.S.A. 22-3302, the statute governing proceedings to determine competency. Current law provides that if the defendant is found to be incompetent to stand trial, the court shall proceed in accordance with K.S.A. 22-3303. The bill creates an exception to this rule and requires the court to proceed in accordance with new Section 4 “if the court finds by clear and convincing evidence that the defendant is not likely to attain competency to stand trial within six months and is a mentally ill person solely because of alcohol or chemical substance abuse, antisocial personality disorder, intellectual disability, traumatic or acquired brain injury, organic personality syndrome or an organic disorder.”

Section 3 amends K.S.A. 22-3303, which provides that an incompetent defendant shall be committed for evaluation and treatment to any appropriate state, county, private institution or facility. The initial commitment is for a period not to exceed 90 days and the chief medical officer of such institution is required to certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate institution or facility until the defendant attains competency or for a period of six months from the date of the original commitment, whichever occurs first. If such probability does not exist, the court

shall order the secretary for aging and disability services to commence involuntary commitment proceedings pursuant to the care and treatment act for mentally ill persons. The bill creates an exception to this procedure and provides that new Section 4 applies if the defendant is a mentally ill person solely because of alcohol or chemical substance abuse, antisocial personality disorder, intellectual disability, traumatic or acquired brain injury, organic personality syndrome or an organic disorder.

Sections 4 through 8 are new sections to be added to article 33 of chapter 22 of the statutes that apply only to the group of defendants just described. Under Section 4(a), if such a defendant is charged with a misdemeanor offense or nonperson felony offense, the court shall dismiss the criminal proceedings without prejudice and the county or district attorney shall provide victim notification. If such a defendant is charged with a person felony offense, the court shall commit the defendant to the custody of the secretary for aging and disability services.

Under Section 4(b), within 90 days after a defendant is committed to the secretary, the secretary is required to submit a written evaluation report to the court that contains an opinion as to: (1) Whether the defendant is likely to cause harm to self or others; and (2) recommendations of a placement, program or community service plan involving the least restrictive setting appropriate to meet the needs of the defendant and consistent with public safety. The court is then required to set a hearing on the secretary's report, to be held within 30 days after the court receives the report.

Under Section 4(c), if the court finds by clear and convincing evidence that the defendant is likely to cause harm to self or others, the court shall order the least restrictive placement or conditions possible as necessary to protect the public. Under Section 4(d), if the court does not find that the defendant is likely to cause harm to self or others, the court shall dismiss the criminal proceeding without prejudice and discharge the defendant

Section 5 provides that, for a defendant placed pursuant to Section 4(c), the secretary for aging and disability services may request that the district court hold a hearing and order a change in placement, conditional release or discharge of the defendant, as appropriate. Section 6 applies if the court orders conditional release and provides that a defendant on conditional release shall be supervised by the district court probation and parole services and subject to other conditions set by the court to ensure the defendant's well-being and the public's safety.

Section 7 concerns discharge of the defendant. Section 7(a) provides that placement under section 4(c) shall not exceed 24 months unless the court determines that the defendant remains likely to cause harm to self or others. Section 7(b) requires the court to hold a hearing to

review the placement of the defendant at least annually. Section 7(c) provides that if the court finds that the defendant is no longer a mentally ill person or is no longer likely to cause harm to self or others, the court shall dismiss the criminal case without prejudice unless the court determines that the defendant has attained competency.

Section 8 provides for tolling of the statute of limitations when a criminal case is dismissed without prejudice under article 33 of chapter 22. The period of limitation for the prosecution for the crime charged shall not continue to run until the defendant has been determined to have attained competency in accordance with K.S.A. 22-3302. This provision is currently found in K.S.A. 22-3305, which is amended in Section 9 of the bill to strike the duplicated language.

Finally, Section 10 amends K.S.A. 59-2946, the definition section for the care and treatment act for mentally ill persons. The bill amends the definition of "mentally ill person subject to involuntary commitment for care and treatment" in subsection (f) to add an exclusion for a person whose diagnosis is solely a traumatic or acquired brain injury. The change makes the definition consistent in the care and treatment act and the criminal procedure provisions.