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## KANSAS MUNICIPAL JUDGES ASSOCIATION

Senator Kellie Warren  
Chair  
Senate Committee on Judiciary

Senator Richard Wilborn  
Vice-Chair  
Senate Committee on Judiciary

Senator Ethan Corson  
Ranking Minority Member  
Senate Committee on Judiciary

Feb 6, 2024

Support for SB448.

Dear Senators,

Please accept this letter as an expression of support for SB448, which would provide for a specific process and procedure for determining competency of a defendant in municipal court.

The Kansas Municipal Judges Association (hereinafter KMJA) consists of approximately 200 municipal judges across the state from approximately 300 municipalities in Kansas. Those 200 judges see thousands of cases each year. Many of those defendants suffer from a mental illness, which is oftentimes severe. Some of those defendants are also dangerous, either to themselves or to others.

The 5<sup>th</sup> Amendment to the U.S. Constitution guarantees the right to due process and a fair trial for all defendants in our court systems. In order to ensure a fair trial, the US Supreme Court has held that the Defendant must have "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and the court must determine whether the defendant has a "factual understanding of the proceedings against him." *Dusky v. US*, 362 US at 402 (1960). The trial court's "failure to observe procedures adequate to protect a defendant's right not to be tried or convicted while incompetent to stand trial deprives him of his due process right to a fair trial." *Pate v. Robinson*, 383 US 375 (1966).

K.S.A. 22-3302 provides for a process for district courts to determine a defendant's competency to stand trial. K.S.A. 22-3303 provides for a defendant found not competent in district court to get mental health treatment in hopes of regaining competency. There is no such corresponding statute for a municipal defendant. This proposed bill seeks to provide municipal courts with a consistent process to follow if questions of competency arise in a municipal defendant, in order to ensure compliance with the U.S. Supreme Court decisions. More importantly, it encourages the district court to take those cases, which provides the opportunity for treatment as set forth in K.S.A. 22-3303.

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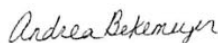
The passage of this bill would set forth the process to be followed if the municipal judge is made aware of a defendant's potential incompetence, authorizing an order to determine competency. This competency evaluation would be paid for by the municipality and the bill sets forth different options for who may conduct the evaluation. . If the defendant is found to be incompetent, the city prosecutor would be required to request that the county or district attorney take the case. If accepted, the district court would take over the prosecution of the case, thereby allowing for the defendant to have the resources available as set forth in K.S.A. 22-3302 and 22-3303. If the county or district attorney declines to take the case, the municipal judge would be required to dismiss the case in municipal court.

This bill also seeks to add municipal court competency cases to the list of cases eligible for reimbursement of jail fees for the cost of housing a defendant while in custody awaiting a competency evaluation. This reimbursement would go to the county jail housing the inmate awaiting a competency evaluation. K.S.A. 19-1936 already allows for reimbursement to the county jails holding inmates awaiting competency evaluations in district court cases.

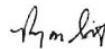
The issue of how to handle cases of questionable competency in municipal court has been an ongoing issue and concern for municipal judges for decades, as there is no consistent process throughout the state. However, a recent federal lawsuit has been filed against the City of Wichita, alleging that the municipal court failed to order competency evaluations in some cases where the defendants were exhibiting signs of incompetence. Although that suit is still pending, it has served as the launching pad for more proactive legislation in this area.

The KMJA board of directors has unanimously voted in support of this proposed bill.

Respectfully Submitted,



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