

MEMORANDUM

**TO: REP. PAT COLLOTON, CHAIR  
COMMITTEE ON CORRECTIONS & JUVENILE JUSTICE**  
**FROM: DAVID R. MOUILLE, Ph.D., VICE CHAIR  
KANSAS BOARD OF FORENSIC EXAMINERS**  
**RE: HOUSE BILL 2707**  
**DATE: FEBRUARY 15, 2012**

I am writing in support of HB 2707. It does solve some present problems and it has the potential both for increasing the safety of our public and for improving the treatment of our mentally ill defendants.

While I compliment you and support your work, I suggest you edit HB 2707. I have two concerns. My first concern is with lines 34 and 35 on page 1, where the bill requires a report including "a current assessment of the defendant's likelihood to cause harm to self or others..." I am certain you are aware the words of any mental health professional who writes such a report will have an extremely grave impact on the lives of our citizens, on the life of the defendant, on the court, and on mental health facilities. The gravity of the impact within an involuntary commitment proceeding cannot be minimized for two reasons: 1) research shows courts and judges seldom disagree with the professional's report; and 2) one of the possible consequences of the professional's report is that the defendant may be institutionalized for an indefinite period. You also should be aware the current body of scientific knowledge supporting evaluations for danger to self and others is quite sophisticated, complex, and extensive, and the training and credentialing process for the professionals performing such exams is quite advanced. I suggest you add specific language to lines 34 and 35, language more consistent with scientific knowledge, language that lays out more detail about what the report should contain and about who should perform the evaluation.

Were you to leave the language of lines 34 and 35 as it stands, you would increase—not resolve—problems the courts and mental health professionals now experience. As a consequence of the vague language in Kansas law, at the present time virtually anyone can declare a defendant competent to stand trial for any reason, and return the defendant to the county jail. The language of lines 34 and 35 would bring the involuntary commitment procedure very close to the competence procedure, that is, the language would allow virtually anyone, even those with little or no scientific knowledge and training, to conclude a defendant poses no danger to himself or others. Such a conclusion, lacking in adequate scientific grounding, falls below the needs of the court, of the defendant, and of our society. It may fall below the criteria of *Frye*. If you seek specific

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language to include in HB 2707, I suggest you read HB 2334, which appeared in your Committee one year ago.

My second concern is with lines 37 through 39 on page 3. At that point, the bill reads, "The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the defendant was committed." This is unrealistic and dangerous, and it is an unfair reversal of Kansas history. The bill is unrealistic and dangerous because the county has no money to finance the evaluation. HB 2707 creates a method of financing that runs quite parallel to the funding method for sexual predator examinations: it requires the counties to pay. The fact that HB 2707 may reflect some of the requirements stated in the care and treatment act does not change the reality of what we face in Kansas: counties do not have money to finance the evaluations. In the past, counties that could not afford the exams began considering whether or not they should bother filing involuntary commitments, and prosecutors and defense attorneys now complain they cannot do their jobs because they receive substandard professional reports. Do you intend HB 2707 to become a reason to reduce, to limit, or to interrupt legal proceedings? The bill is unfair because lines 37 through 39 admit the State is abandoning responsibility for the function of its courts, for the safety of its citizens, and for the treatment of its mentally ill and dangerous people. The passage calls for the county to assume financial responsibility. At the same time, the passage on page 3 unfairly penalizes a county with a high crime rate, and places the county budget in the hands of criminals: if a mentally ill person decides to commit a crime in a certain county, the county budget will be required to finance the crime.

I suggest we consider an alternative method for financing the evaluation of a mentally ill defendant. There is another method for financing an evaluation to determine whether a defendant is dangerous to self and others, a method proven and perfected through thirty years of history and refined in at least sixteen other states. This method could be implemented in Kansas without increasing taxes and without grants. I realize I am being quite cryptic at the moment, but this is not the time or place to lay out all the details of a project extending far beyond the changes provoked by HB 2707. What is important now is that I inform you that alternatives for financing exist, and HB 2707 is as good a place as any to consider alternative financing. We have the money, the knowledge, the professionals, and the tools to make it work. We need only for the legislature to insist it be done.

You have a true advantage and rare opportunity available to you in HB 2707. You have the chance to insist safety be increased, courts function more efficiently, and mentally ill defendants receive better treatment. The only thing you have to do is insist that psychiatrists, psychologists, and social workers be trained and function at standards

matching established national norms. You would not be doing more than insisting mental health professionals function within the limits of their training, license, and competence. You have it within your power to insist that Kansas licensed mental health professionals provide Kansas courts and Kansas citizens with the same quality of service available in other states. Your demand will not increase the cost of professional practice, and it will cost the State nothing. I can find no reason for you to hesitate. Demand the best for Kansas citizens and the best from Kansas professionals.

I suggest this Committee advance HB 2707 after some editing.