



JOHN M. SETTLE PAWNEE COUNTY ATTORNEY
PAWNEE COUNTY COURTHOUSE – LARNED, KANSAS 67550 – 620-285-2139

**TESTIMONY OF JOHN M. SETTLE, PAWNEE COUNTY ATTORNEY
IN OPPOSITION TO HOUSE BILL 2497
House Corrections & Juvenile Justice Committee Hearing March 6, 2012**

Honorable Chairwoman Colloton and Members of the Committee:

I have served as the Pawnee County Attorney since my appointment by Governor Graves in 1995. I am a Past President of the Kansas County and District Attorneys Association and I served on the KCDAAs Board of Directors from 1996 through 2004. I presently serve on the Criminal Law Advisory Committee of the Kansas Judicial Council. I also serve on the Board of Editors of *The Kansas Prosecutor*, a publication of the KCDAAs. In addition to my legal career, I own a newspaper publishing business which publishes five Kansas publications covering the Kansas communities of Larned, Lyons, Hoisington and Ellinwood. Those publications reach over 30,000 readers in the Central Kansas counties of Pawnee, Edwards, Barton, Rice and Stafford.

I appear today on behalf of myself as a Kansas prosecutor, the Pawnee County Commissioners, the citizens of Pawnee County and the citizens of the State of Kansas. **I am opposed to HB 2497 because as was the case with the present bill's predecessor, HB 2334 from the 2011 legislative session, HB 2497 will not provide any benefit for the citizens of Kansas. Instead, HB 2497 will ultimately reduce public safety and put more citizens of Kansas at risk of harm.**

Proponents of HB 2497 obviously believe that Kansas courts find too many criminal defendants competent to stand trial. An analysis of the bill in light of current law will make it clear that will be the ultimate result of the passage of HB 2497 so that must be its purpose.

I submit to this committee that **such a purpose is not appropriate policy for the State of Kansas** and further that Kansas courts do not find any criminal defendants competent to stand trial unless a particular defendant meets the strict standard set by years of Kansas appellate case law and well established statutory procedures.

HB 2497 is bad public policy that will do nothing but slow the criminal trial process, confuse Kansas trial courts, prosecutors and defense attorneys and therefore thwart the interests of justice.

Specific Problems presented by HB 2497

- 1. Section 1 of HB 2497 changes the definition of “incompetent to stand trial” from the definition that has been in place for many years. The status of Kansas law regarding the question of “competency to stand trial” is well established and widely understood by Kansas Courts, defense attorneys and prosecutors. See State v. Foster, 290 Kan. 696 (2010), 233 P.3d 265. Why should this definition be changed when it has been affirmed by Kansas appellate courts for many years?** Such a change will create confusion in Kansas courts from the trial level through the appellate courts and will cause a dramatic increase in criminal appeals filed regarding the issue of “competency to stand trial” which will delay the ultimate resolution of many cases and increase the costs associated with those cases.
- 2. The confusion that will be associated with the change in the definition of “incompetent to stand trial” will likely result in more defendants being found “not competent to stand trial” than in the past. Most of those defendants will pose some danger to themselves or others and will need to be housed and treated pursuant to Sections 14, 15, 16, 17 and 18 of HB 2497. Considering the current shortage of inpatient mental health beds in Kansas, where will the state place the additional defendants who are incompetent to stand trial and dangerous to the public? What will be the additional costs to the state? What will be the cost to public safety if the state does not build more mental health beds? Currently the lack of funding has created a shortage of inpatient mental health beds which I believe resulted in the murder of a Kansas citizen by one such “defendant/patient”. The murderer in that case had been found not competent to stand trial in a prior case which involved the same victim. After being found not competent to stand trial in the prior case the murderer was ultimately placed on outpatient status and released to a community mental health center for outpatient treatment. Ultimately, the murderer left his outpatient placement, went to the victim’s home and succeeded in killing the victim. I submit to this committee that the obvious risk to the victim of placing the**

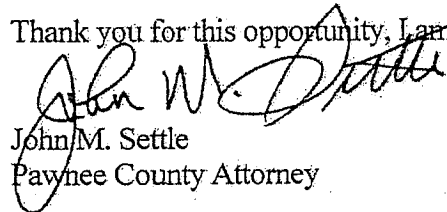
- murderer on outpatient status would not have been taken if there had been more inpatient beds available. HB 2497 will only exacerbate this problem.
3. **Section 4 of HB 2497 sets forth specific training, experience and educational criteria required before an evaluator can be appointed by a court. Such an evaluator is acting as an expert witness and the Kansas statutes and case law set forth the specific requirements for the admission of any expert testimony. See K.S.A. 60-419 and 60-456(b); and State v. Lumbrera, 525 Kan. 54, 845 P.2d 609 (1992). This provision of HB 2497 will simply create confusion for the courts and more fodder for appellate review.**
 4. **Section 6 of HB 2497 arbitrarily reduces the established time frame to conduct such evaluations with no clinical basis to support such a change. In contested matters, the quality and competence of the Larned State Security Hospital staff and their procedures is well settled. The procedures followed by LSSH in the performance of an evaluation to determine whether a defendant is "competent to stand trial" have been established over the course of many years. The current standard of "60 days or until the examination is completed, whichever is the shorter period of time" is based upon years of practical experience in the performance of such evaluations. In fact, for many years Larned State Hospital has offered formal training in Forensic Psychology and specific training in evaluation of competency to stand trial cases. The team approach used by LSSH staff in conducting such evaluations is very comprehensive. To arbitrarily limit the time available for such an evaluation would result in seriously compromising the integrity and value of such evaluations.**
 5. **Section 6 (3) of HB 2497 will provide for a very poor quality evaluation as compared to an evaluation completed at the LSSH and is certainly not appropriate in a contested matter.**
 6. **The arbitrary time limits set throughout HB 2497 are logistically impractical from a trial practice standpoint and will likely result in causing many serious criminal cases to become very difficult to successfully prosecute.**

Once again let me point out that the status of Kansas law regarding the issue of whether a defendant is "incompetent to stand trial" is well established and widely

understood by Kansas Courts, defense attorneys and prosecutors. The proposed bill will significantly change the procedures followed by Kansas trial courts, prosecutors and defense counsel. A side effect of such dramatic changes in criminal procedures is confusion which will result in an additional burden for Kansas trial courts, appellate courts and the communities which these case result from which obviously increases the costs associated with the proposed changes and the burden to every citizen in Kansas.

I urge this committee to realize that HB 2497 is an unnecessary bill that will put the safety of every Kansas citizen at risk and is obviously bad public policy.

Thank you for this opportunity, I am happy to try to answer any questions you might have.



John M. Settle
Pawnee County Attorney