

February 29, 2012

Representative Pat Colloton
Chair, House Committee on Corrections and Juvenile Justice

Dear Representative Colloton,

I am writing to support passage of H.B. 2497 concerning revision of our state law procedures on mental competency to stand trial. This bill introduces detailed requirements regulating the appointment of forensic evaluators, introduces reasonable and clear standards for the contents of orders of evaluation and standards for the contents of written evaluation reports, and it protects the rights of persons whose competency to stand trial is being questioned. It mandates rules assuring public safety in such cases. Competency to stand trial is a requirement of the Sixth Amendment as well as of Due Process. Someone who is unable to understand the nature of the proceedings or assist his or her lawyer cannot participate in the adversary system of justice. That person's participation is a fundamental requirement of our national law.

This revision is long overdue and the need for sensible legislative guidance in the forensic evaluation of competency to stand trial is recognized by judges, prosecutors, defense counsel, and experts in the mental health fields. Indeed, it is urgently needed. This bill, if passed, will assure a degree of uniformity in the practice of forensic evaluations in competency cases throughout the state and allow courts to fulfill their obligation to evaluate expert opinion in mental competency cases for legal sufficiency. Mental competence to stand trial is-- bottom line-- a legal concept. Responsibility for the final decision rests squarely with the court: not with experts.

Members of the legal profession and the Kansas mental health community including forensic psychologists have long believed that there is a serious lack of training in this state for those performing forensic evaluations in competency to stand trial matters. Judges and lawyers point to inadequate reports that do not assist judges to make critical decisions on competency. Repeatedly, we hear a litany of requests for training.

As the director of the Washburn Center for Excellence in Advocacy, I see a role for our Center in assisting in the development of educational activities in an interdisciplinary setting that will support the goals of H.B. 2497 by providing quality training in forensic evaluations and in the law and policy areas that forensic evaluators, lawyers and judges must understand to practice in this field. Passage of H.B. 2497 will provide a legislative framework that will promote the development of sound and practical training programs since it mandates clear standards for evaluations. The Institute of Law, Psychiatry, and Public Policy at the University of Virginia is a nationally recognized interdisciplinary program in mental health law and forensic psychology and social work that has developed programs to meet training needs specified in the Virginia statute related to forensic evaluations. The institute also runs yearly programs in response to community needs and developments in the mental health law field. We can do this in our state.

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Our Center is currently engaged in designing and coordinating a federal grant based program for prosecutors and capital defense counsel to train them in the trial of capital murder cases. Such training includes educating lawyers on working effectively and efficiently with experts and specialized investigators and provides interdisciplinary training of interest to forensic evaluators as well. Lawyers who have signed up for this program are very interested in improving their skills in the handling of expert testimony. This includes the preparation and use of forensic evaluation reports.

We at Washburn also have a long successful record of training lawyers through continuing legal education in litigation and related subjects. When the Menninger Foundation was in Topeka, Washburn Law School worked, for years, with their forensics department in developing simulated trials to help forensic psychologists and psychiatrists improve courtroom skills. For many years, Menninger placed psychiatric interns in our law clinic, as part of their clinical rotation, to consult with our faculty and students in cases with mental health issues.

In sum, I hope that the Kansas legislature will enact this bill into law. It deserves the strong support of lawyers, prosecutors, judges, and mental health professionals and it is in the interest of our entire community that it becomes law.

Sincerely,

Michael Kaye
Professor of Law
Director, Washburn Center for Excellence in Advocacy
Washburn University Law School