

REPORT OF THE JUDICIAL COUNCIL AD HOC ADVISORY COMMITTEE ON MUNICIPAL DEFENDANT COMPETENCY

June 6, 2025

In June 2024, the League of Kansas Municipalities asked the Judicial Council to study the issues raised in 2024 S.B. 448, concerning the process for determining whether a defendant is incompetent to stand trial in a municipal court case, and how litigants and municipal courts can proceed if a defendant is found to be incompetent to stand trial. The Judicial Council created an ad hoc advisory committee to complete this study.

COMMITTEE MEMBERSHIP

The members of the Ad Hoc Advisory Committee on Municipal Defendant Competency are:

Hon. Brenda Stoss, Chair, Salina; Salina Municipal Court Judge.

Tim Arehart; Olathe; Defense Attorney

Marc Bennett; Wichita; Sedgwick County District Attorney

Hon. Lisa Beran; Great Bend; District Court Judge; 20th Judicial District

Hon. Cindi Cornwell; Overland Park; Overland Park Municipal Court Judge

Sherry Diel; Topeka; Kansas Department for Aging and Disability Services
Chief Counsel

Cole Hoffmeister; Independence; City Prosecutor for the City of
Independence and Private Practice Attorney

Jon Khalil; Kansas City; City Prosecutor for Unified Government of
Wyandotte County/Kansas City

Hon. Daniel Love; Dodge City; Dodge City Municipal Court Judge

Doug McNett; Larned; Pawnee County Attorney

Hon. Richard Ress; Colby; District Magistrate Judge, 15th Judicial District,
and Colby Municipal Court Judge

Amanda Stanley; Topeka; City Attorney for City of Topeka

Colin Thomasset; Topeka; CEO at Wheat State Healthcare

SUMMARY

The Ad Hoc Advisory Committee on Municipal Defendant Competency (Committee) does not recommend the one-size-fits-all approach to addressing municipal defendant competency in 2024 S.B. 448. Due to the independent and unique nature of each city and municipal court, the Committee recommends a statute provide multiple options for the court or prosecutor to use when addressing a possible competency issue of a municipal defendant.

When there is a reason to believe a defendant is incompetent to stand trial, the Committee recommends a statute include these three options:

- (1) The court may order a competency evaluation;
- (2) The prosecutor may dismiss the case and refer it to the county or district attorney;
and
- (3) In extreme circumstances, the prosecutor may file a case in district court under the Kansas Care and Treatment Act for Mentally Ill Persons to require the defendant to undergo treatment.

The Committee also recommends municipal courts look into providing types of alternative programs that connect defendants to community services with the goal of reducing the future escalation of a mental health concern into a competency issue.

A proposed statute draft begins on page 12.

METHOD OF STUDY

The Committee met six times between August 2024 and February 2025. During this study, the Committee reviewed 2024 S.B. 448; all legislative testimony and hearing information for 2024 S.B. 448; Kansas' and other states' statutes; information from the Association of Community Mental Health Centers; survey data from Kansas municipal court judges, municipal court prosecutors, and county and district attorneys; and relied on the expertise of its members.

BACKGROUND

Kansas has 394 separate municipal courts. Each municipal court is exclusively funded and staffed by its city. Municipal courts are separate from the state level district courts, court of appeals, and supreme court, though appeals from municipal courts are heard in the state level district court. While the larger municipal courts handle thousands of cases, are open five days a week, and employ full-time judges and staff, the majority of municipal courts handle less than 100 cases per year, are open a reduced number of days each month, and employ a part-time judge with minimal or nonexistent staff. The budget and services available to each municipal court are as varied as the number of municipal courts in Kansas.

Current Process to Address Competency to Stand Trial

The Due Process Clause of the Fourteenth Amendment of the United States Constitution prohibits the criminal prosecution of a defendant who is not competent to stand trial.¹ The U.S Constitution applies to all levels of courts, including municipal courts. Kansas statutes state that a “person is ‘incompetent to stand trial’ when such person is charged with a crime and, because of mental illness or defect is unable: (1) to understand the nature and purpose of the proceedings against such person; or (2) to make or assist in making such person's defense.”²

The Kansas Code of Criminal Procedure sets out a uniform procedure used in Kansas’ state level district courts when a defendant may be incompetent to stand trial. This process includes two main phases. First, the court determines whether the defendant is competent to stand trial. Second, if the defendant is incompetent to stand trial, the court orders the defendant to undergo treatment to restore the defendant to competency.

While the Kansas Code of Criminal Procedure provides the process for addressing competency at the state level district courts, the Kansas Code of Procedure for Municipal

¹ See *Medina v. California*, 505 U.S. 437, 439, 112 S.Ct. 2572, 120 L.Ed.2d 353 (1992); *State v. Ford*, 302 Kan. 455, 353 P.3d 1143 (2015).

² K.S.A. 22-3301(a).

Courts does not provide a process for addressing competency at the city level municipal courts.³ Because the Kansas Code of Procedure for Municipal Courts does not provide a process for addressing competency, each municipal court handles it differently.

In 2024, S.B. 448 was introduced in the Kansas legislature with the goal of providing a uniform process for municipal courts to address competency issues. However, due to concerns about the bill that were raised during the legislative hearing process the bill did not pass, and the League of Kansas Municipalities asked the Judicial Council to study the bill and the issues it raised.

DISCUSSION

In the vast majority of municipal court cases, there is no question that defendants are competent to stand trial. Based on the Committee members' experience and surveys of municipal prosecutors and judges conducted by this Committee, the Committee concluded that though only a small percentage of defendants in municipal court have competency issues, that small percentage of defendants are disturbing communities and consuming a great deal of law enforcement and municipal court resources.

For example, law enforcement may arrest a defendant for trespassing. The defendant is charged in the municipal court, but when the defendant appears before the judge, the judge can see that the defendant is unable to comprehend basic information. In some jurisdictions, the municipal prosecutor may dismiss the case and maybe refer it to the county or district attorney to see if the case can be filed in district court. However, due to the number of cases in district court, county and district attorneys rarely file these referred cases.

In some municipalities, when faced with a competency issue, the court may order the defendant to undergo a competency evaluation. This evaluation is paid for by the city. If the evaluation concludes the defendant is competent to stand trial, the case can proceed. If the evaluation concludes the defendant is incompetent, the case must be dismissed

³ K.S.A. 12-4101 *et seq.*

because the city cannot convict someone who is incompetent to stand trial. There is no statutory authorization for the municipal court judge to order the defendant to undergo treatment to restore competency; however, even if there were such a statute, most cities could not afford to pay for the treatment to restore the defendant's competency.

In the end, regardless of whether a competency evaluation is done, most cases with competency issues are dismissed and the defendant is released. The same cycle will repeat the next time the defendant, who has not received any treatment to address the defendant's underlying mental health issue, is arrested by law enforcement.

2024 S.B. 448

In 2024 S.B. 448, if the municipal court judge had reason to believe the defendant was incompetent to stand trial the bill authorized a judge to order an examination to determine the defendant's competency. If the defendant was found incompetent to stand trial, the bill required the municipal prosecutor to request the county or district attorney review the case for the filing of a complaint in the district court. If the county or district attorney chose to file a complaint based on the municipal prosecutor's referral, the municipal court would dismiss the municipal court case against the defendant. The bill did not authorize municipal courts to order competency restoration treatment.

The Committee agreed that the question of how competency to stand trial can be handled in municipal courts needs to be addressed, but the Committee had many concerns about the proposal in S.B. 448. Those concerns included:

- Possible violations of speedy trial rights if the proceeding was not suspended.
- The financial burden on cities if a defendant remained in jail while waiting for a competency evaluation.
- Adding to the long waitlist for competency evaluations completed at a state hospital.
- The lack of competency evaluators across the state.

- The waiting period for a competency evaluation exceeding the length of the maximum sentence for a municipal court conviction.
- The lack of timeframes for completing an evaluation and for the court's actions after receiving the completed evaluation.
- The charging of a defendant at the district court based on the same facts supporting the municipal court case before the municipal court case has been dismissed.

The Committee was initially concerned that the bill authorized municipal courts to order competency evaluations without providing a process for ordering treatment for competency restoration. Treatment for restoring competency has historically been administered through an inpatient stay at a state hospital. The Committee explored the idea of municipal courts ordering competency restoration treatment but was concerned about the 440-day average length of the waiting period for a defendant to receive treatment at a state hospital,⁴ cities' ability to pay for the treatment, and cities' ability to pay for the defendant to remain in jail waiting for the treatment.

The long waiting period for treatment was also a concern because the jail sentence for a municipal court violation cannot exceed one year. When a defendant's number of days in jail prior to sentencing exceed the maximum jail sentence for the offense, the defendant can no longer be detained in jail. Some municipal offenses have a maximum sentence of six months, one month, or even no jail sentence. There is a strong possibility that a defendant waiting in jail for competency treatment at the state hospital would serve the maximum amount of time in jail for the underlying offense. For these reasons, the Committee did not pursue the idea of a municipal court ordering competency restoration treatment through a state hospital.

⁴ See Fiscal Note for S.B. 448, https://www.kslegislature.gov/li/b2023_24/measures/documents/fisc_note_sb448_00_0000.pdf, last accessed on November 4, 2024.

Recommendations

Since all municipal courts are separate and unique, the Committee acknowledged that an approach that might work well in one municipal court may not work in another. Therefore, the uniform approach to competency evaluation and restoration used at the district court level would not work at the municipal court level unless the state fully overhauled the municipal court system in Kansas.

Rather than restructuring the municipal court system, the Committee unanimously agreed that a statute should provide multiple options for municipal defendants, prosecutors, and judges to utilize when facing a competency issue. The Committee identified three distinct options that could be used when there is a reason to believe a defendant is incompetent to stand trial:

- (1) The court may order a competency evaluation;
- (2) The prosecutor may dismiss the case and refer it to the county or district attorney;
and
- (3) In extreme circumstances, the prosecutor may file a case in district court under the Kansas Care and Treatment Act for Mentally Ill Persons to require the defendant to undergo treatment.

The Committee agreed that a statute should provide the municipal courts with these options and allow the judges, prosecutors, and defendants, to then choose the option or series of options that fit the facts of each individual case.

Option 1. Competency Evaluation

If a city is willing to pay for competency evaluations ordered by the municipal court, the Committee agreed courts should be allowed to order competency evaluations. The Committee's proposed statutory draft suspends speedy trial requirements during the competency evaluation and requires the evaluations be completed within 60 days of the court order. To avoid adding to the workload at the state hospitals, the statutory draft does

not include a state institution as a facility that can complete a competency evaluation for municipal courts.

If a competency evaluation finds the defendant competent, then the case can continue. If, based on the competency evaluation, the court finds the defendant incompetent to stand trial, the case must be dismissed and the prosecutor is free to do nothing, refer the case to the county or district attorney, or choose to file a care and treatment case. The Committee agreed that municipal courts should not be allowed to order competency restoration treatment due to the financial burden of treatment and time in jail on cities and because the waiting period for a defendant to receive the treatment at a state hospital would exceed the amount of time the defendant might serve in jail for the municipal court offense.

Option 2. Dismiss and Refer

A prosecutor always has the right to dismiss a case and choose whether to refer a case to the county or district attorney. Specific statutory authority for this option is not necessary. The Committee agreed the statute should not require a municipal court prosecutor to refer a case to the county or district attorney, nor could a statute require a county or district attorney to file a case based on the referral. Prosecutors have the right to exercise discretion about charging decisions. To increase awareness of this already existing option, the Committee's proposed statutory draft includes language that lists the option that a prosecutor may refer the case to the county or district attorney.

One advantage of referring the case to the county or district attorney is the possibility that the defendant may qualify for and benefit from a specialty court program run at the district court. If a defendant qualifies for a specialty court program through the district court, there is an increased chance the defendant will receive assistance that might reduce the defendant's likelihood of committing additional offenses.

If a referred case is filed in district court, the Committee agreed that, if the district court is determining whether the defendant is competent to stand trial, the district court should be allowed to use a competency evaluation recently completed at the municipal

court level. The district court would still have the option to order a new competency evaluation; however, in certain situations, if the district court could rely on a municipal court competency evaluation that recently found the defendant incompetent, the district court could find the defendant incompetent and start the competency restoration services more quickly. This process would avoid unnecessary expenses and the duplication of work. The Committee recommends amending K.S.A. 22-3302(c) as proposed in its statutory draft.⁵

Option 3. Care and Treatment Case

The Kansas Care and Treatment Act for Mentally Ill Persons governs when the court can involuntarily commit someone for treatment.⁶ The statute does not require the person filing the petition have any particular relationship to the person needing care and treatment. A municipal prosecutor can file the case in district court. While this is already allowed under current law, the Committee did not think many prosecutors know that this is an option.

While the Committee did not envision municipal prosecutors filing care and treatment cases often, the Committee agreed that it would be a very useful option to use if a local citizen is severely mentally ill, refusing treatment, and regularly committing crimes that the citizen cannot be prosecuted for due to competency issues. Though a change in the law is not necessary for municipal prosecutors to file a care and treatment case, the Committee included a reference to this option in its proposed statutory draft.

Mental Health Treatment

If the legislature enacts the proposed statute, it will provide some assistance to municipal courts regarding how to address issues of competency but will not address

⁵ While reading K.S.A. 22-3302(c), the Committee noted that it authorizes the court to “impanel a jury of six persons to assist in making the determination” of whether a defendant is competent to stand trial. The Committee agreed that in practice, a jury is never used to make this determination. Though outside the immediate scope of this study, the Committee recommends this option of impaneling a jury be removed from the statute.

⁶ K.S.A. 59-2957(a).

defendants' underlying problems. If a defendant has not received treatment for the mental illness that is likely causing the defendant to commit offenses, then the defendant is likely to commit additional offenses.

The legal issue of competency to stand trial is a separate legal issue from long term treatment of a defendant's mental health. However, the Committee saw a defendant's interaction with the municipal court system as an opportunity for defendants to access mental health treatment resources. If a defendant receives mental health treatment and enters recovery, the defendant is less likely to appear before the court in the future with a competency issue.

Both district courts and municipal courts have implemented programs to help defendants address the issues underlying the criminal offense. These include diversion programs, alternative sentencing programs, specialty courts, and other voluntary programs to assist with substance abuse, mental health, housing, etc.

For example, the city of Pittsburg, Kansas, has a voluntary program to assist defendants with accessing a variety of community services. The Pittsburg Municipal Court prosecutor, John Mazurek, has partnered with community service providers to offer municipal court defendants the chance to access community services when they attend court. The service providers send representatives to every court hearing (dockets held once a week) and defendants can immediately apply for services such as housing assistance or mental health treatment.

When the city prosecutor or defense attorney see a defendant who may benefit from mental health evaluation or treatment, the defendant is told about the mental health services available. If the defendant requests mental health services from the community service providers and signs a release of information so the provider can talk to the prosecutor, the prosecutor will continue the case out for 90 days. If the defendant successfully participates in the provider recommended treatment services, the prosecutor often dismisses the charge.

The Committee understood that Pittsburg's program is not a program that would work for defendants that might be or are incompetent to stand trial. However, the Committee recommends municipal courts look into these types of alternative programs as an opportunity to reduce the future escalation of a mental health concern into a competency issue.

CONCLUSION

Municipal courts need direction for how to address defendant competency issues, but due to the independent nature of each municipal court, the differing amounts of resources available to each municipal court, and the limited nature of municipal court crimes, the Committee recommends against a statute providing only one way for competency issues to be handled at the municipal court level.

Instead, it recommends a statute allow municipal judges, prosecutors, and defendants to choose from a variety of options that are specific to the needs of the defendant and the resources available to the municipal court. The Committee recommends these options include, ordering a competency evaluation, the dismissal of the case, the referral of the case to the county or district attorney, and the filing of a care and treatment case.

The Committee recommends the following statutory language.

Proposed Statutory Draft

Kansas Code of Procedure for Municipal Courts

New Section 1.

(a) At any time after the defendant has been served with the complaint and before the satisfaction of sentence, if the municipal judge before whom the proceedings are pending finds that there is reason to believe that the defendant is incompetent to stand trial, all speedy trial requirements shall be suspended and, after a hearing, the court may order a psychiatric or psychological examination of the defendant in accordance with subsection (b).

(b)(1) To facilitate a psychiatric or psychological examination, the court may order that an examination be completed by:

(A) an appropriate county or private institution or treatment provider;

(B) a licensed physician who is qualified through training or experience or a licensed psychologist to examine the defendant and report to the court; or

(C) an examiner from a list of competency examiners used in the judicial district in which the municipal court is located.

(2) No statement made by the defendant during any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

(3) The costs for an examination ordered pursuant to this section shall be paid from municipal court funds or the general fund of the municipality.

(4) The psychiatric or psychological examination shall be completed within 60 days of court's order for an examination to determine the defendant's competency.

(5) Before the expiration of the 60-day examination period, the professional approved by the court to examine the defendant shall certify to the court whether the defendant is competent to stand trial.

(6) Upon notification of the court that a defendant subject to examination under this subsection has been found competent to stand trial, the proceedings that have been suspended shall resume.

(7) If the examination shows that the defendant is incompetent to stand trial, a hearing shall be conducted to determine the competency of the defendant. The defendant shall be present for any hearing to determine competency.

(8) If the court determines the defendant is incompetent to stand trial, the criminal charges against the defendant shall be dismissed and the city attorney may file an action pursuant to subsection (c) or request that the district attorney or county attorney review the case for the filing of a complaint in the district court.

(c) The city attorney may file in the appropriate district court, a petition as provided for in pursuant to K.S.A. 59-2945 et seq, and amendments thereto.

(d) This section shall be a part of and supplemental to the Kansas code of procedure for municipal courts.

Section 2. Amendment of K.S.A. 12-4113 – Definition section of the Kansas code of procedure for municipal courts

As used in this act:

...

(p) "Incompetent to stand trial" means a person who is charged with a crime and, because of mental illness or defect, is unable to:

(1) understand the nature and purpose of the proceedings against such person; or

(2) make or assist in making such person's defense.

(q) "Treatment provider" means any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or person authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

District Court Determination of Competency Statutory Amendment

Section 3. Amendment of K.S.A. 22-3302.

(a) At any time after the defendant has been charged with a crime and before pronouncement of sentence, the defendant, the defendant's counsel or the prosecuting attorney may request a determination of the defendant's competency to stand trial. If, upon the request of either party or upon the judge's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the defendant is incompetent to stand trial, the proceedings shall be suspended and a hearing conducted to determine the competency of the defendant.

(b) If the defendant is charged with a felony, the hearing to determine the competency of the defendant shall be conducted by a district judge.

(c) (1) The court shall determine the issue of competency and may impanel a jury of six persons to assist in making the determination. The court may order a psychiatric or psychological examination of the defendant. To facilitate the examination, the court may:

(A) Order that an evaluation be completed by an appropriate state, county or private institution or facility to be conducted in person or by use of available electronic means while the defendant is in jail, at any secure location or on pretrial release;

(B) designate an appropriate state, county or private institution or facility to conduct the examination while the defendant is in jail, at any secure location or on pretrial release; or

(C) appoint a licensed physician who is qualified through training or experience or a licensed psychologist to examine the defendant and report to the court; or

[\(D\) rely on the psychiatric or psychological examination ordered by the municipal court to find the defendant incompetent to stand trial.](#)

(2) If the court orders the defendant committed to an institution or facility for the examination, the commitment shall be for a period not to exceed 60 days from the date of admission or until the examination is completed, whichever is the shorter period of time. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

(3) Before the expiration of the 60-day evaluation period, the professional approved by the court to examine the defendant or, if the defendant is committed for inpatient examination, the chief medical officer or head of the appropriate institution or facility shall certify to the court whether the defendant is competent to stand trial.

(4) Upon notification of the court that a defendant committed for psychiatric or psychological examination under this subsection has been found competent to stand trial, the court shall order that the defendant be returned no later than seven days after receipt of the notice for proceedings under this section. If the defendant is not returned within that time, the county where the proceedings will be held shall pay the costs of maintaining the defendant at the institution or facility for the period of time the defendant remains at the institution or facility in excess of the seven-day period.

(d) If the defendant is found to be competent, the proceedings that have been suspended shall be resumed. If the proceedings were suspended before or during the preliminary examination, the judge who conducted the competency hearing may conduct a preliminary examination or, if a district magistrate judge was conducting the proceedings prior to the competency hearing, the judge who conducted the competency hearing may order the preliminary examination to be heard by a district magistrate judge.

(e) If the defendant is found to be incompetent to stand trial, the court shall proceed in accordance with K.S.A. 22-3303, and amendments thereto.

(f) If proceedings are suspended and a hearing to determine the defendant's competency is ordered after the defendant is in jeopardy, the court may either order a recess or declare a mistrial.

(g) The defendant shall be present personally at all proceedings under this section.

Nancy Strouse
Kansas Judicial Center
301 SW 10th Ave
Topeka, KS 66612

AGENDA ITEM 3c

May 15, 2024

Dear Ms. Strouse,

I am writing to formally submit a request to the Kansas Judicial Council on behalf of the League of Kansas Municipalities and our member cities across the state. SB 448 addresses competency evaluations in municipal courts, and our members are seeking clarity on the policies within the legislation. Review of the issue and the proposed legislation fits squarely within the mission of the Judicial Council to improve the administration of justice in Kansas, and we appreciate your consideration of the matter.

Overland Park Judge Ryan Dixon introduced SB 448 during the 2024 legislative session on behalf of the Kansas Municipal Judges Association. The bill addresses a decades-long issue brought to the forefront in 2023 when a federal suit was filed against the City of Wichita alleging that the municipal court failed to seek evaluation of defendants that may not have been competent to stand trial. The bill intends to provide a process by which competency could be determined when an individual stands for trial in municipal court.

During the bill's hearing, it became apparent that SB 448 did not answer all of the questions that needed to be addressed if such a process is going to be passed into law and implemented in municipal courts across the state. The issues include:

- The fiscal impact that SB 448 would have for cities, which could be significant.
- Evaluations would be happening at municipal courts, which are not courts of record.
- The process created could cause significant delays in the disposition of cases before municipal courts.
- SB 448 contains no time limit in which to make competency determinations which could lead to defendants spending more time in jail than they would have otherwise.

At the hearing for the bill, the League had representatives from member cities that testified in support of the bill as drafted and one representative from a member city that opposed the legislation. In making this request, we seek recommendation by the Judicial Council to address the issues presented in the bill hearing and hope to find some reconciliation between the two positions—particularly as it relates to the larger issue of promoting justice within our courts. It is the League’s belief that the Judicial Council is well positioned to study the issue and uniquely suited to ensure that any recommendation made as to future legislation has received the careful, comprehensive analysis that this issue requires.

Please do not hesitate to reach out with any questions that you may have regarding our request. You can reach me at 785-354-9565 or jgoodyear@lkm.org.

Sincerely,

A handwritten signature in black ink, appearing to read "John Goodyear". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John Goodyear
General Counsel
League of Kansas Municipalities

SENATE BILL No. 448

By Committee on Judiciary

2-5

1 AN ACT concerning competency to stand trial; establishing procedures in
2 the Kansas code of procedure for municipal courts related to
3 determination of an accused person's competency to stand trial;
4 authorizing a municipal judge to order an examination; requiring
5 dismissal of criminal charges if the examination shows that an accused
6 person is incompetent to stand trial; requiring the secretary for aging
7 and disability services to reimburse counties for the costs of keeping
8 such persons in the custody of a county jail awaiting examination,
9 evaluation or treatment; amending K.S.A. 19-1936 and repealing the
10 existing section.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 New Section 1. (a) (1) At any time after the defendant has been served
14 with the complaint and before the pronouncement of sentence, if the
15 municipal judge before whom the complaint is pending finds that there is
16 reason to believe that the accused person is incompetent to stand trial, the
17 municipal judge may order an examination to determine the defendant's
18 competency.

19 (2) To facilitate the examination, the court may:

20 (A) Order that an evaluation be completed by an appropriate state,
21 county or private institution or facility;

22 (B) appoint a licensed physician who is qualified through training or
23 experience or a licensed psychologist to examine the defendant and report
24 to the court; or

25 (C) order an evaluation or appoint an examiner from a list of
26 competency evaluators and examiners in use by the district court where the
27 municipal court is located.

28 (3) The costs for an examination or evaluation ordered pursuant to
29 this section shall be paid from municipal court funds or the general fund of
30 the municipality.

31 (b) If the examination or evaluation shows that the accused person is
32 incompetent to stand trial, the city attorney shall request that the district
33 attorney or county attorney review the case for the filing of a complaint in
34 the district court. If the case is accepted and filed in the district court, the
35 municipal court shall dismiss the criminal charges filed against the
36 defendant and the district court shall proceed in accordance with K.S.A.

1 22-3302, and amendments thereto. If the case is not accepted by the
2 district attorney or county attorney for filing in the district court, the
3 municipal court shall dismiss the criminal charges filed against the
4 defendant.

5 (c) As used in this section, a person is "incompetent to stand trial"
6 when such person is charged with a crime and, because of mental illness or
7 defect, unable to:

8 (1) Understand the nature and purpose of the proceedings against
9 such person; or

10 (2) make or assist in making such person's defense.

11 (d) This section shall be a part of and supplemental to the Kansas
12 code of procedure for municipal courts.

13 Sec. 2. K.S.A. 19-1936 is hereby amended to read as follows: 19-
14 1936. (a) Whenever a person is in the custody of a county jail awaiting
15 examination, evaluation or treatment pursuant to K.S.A. 22 - 3219, 22 -
16 3302, 22 - 3303, 22 - 3428, 22 - 3429 or 22 - 3430, and amendments
17 thereto, *or section 1, and amendments thereto*, the county that maintains
18 such county jail shall be reimbursed by the secretary for aging and
19 disability services for the costs related to such custody at the rate of \$100
20 per day. The county shall be compensated at such rate for each day that a
21 person is in custody and confined as described in this subsection:

22 (1) If such person is awaiting examination or evaluation, from the
23 date the request for examination or evaluation is made until the date the
24 person is taken from confinement in the county jail for such examination
25 or evaluation or the examination or evaluation is completed at the county
26 jail; and

27 (2) if such person is awaiting treatment, from the date of return to
28 confinement in the county jail from examination or evaluation or the
29 examination or evaluation is completed at the county jail until the date the
30 person is taken from confinement in the county jail for such treatment or
31 treatment is completed at the county jail.

32 (b) On and after July 1, 2022, if a county has a claim for
33 reimbursement of costs described in subsection (a), the county shall notify
34 and provide documentation of such costs to the secretary for aging and
35 disability services on a quarterly basis. The secretary for aging and
36 disability services shall certify the amount of moneys attributable to such
37 costs and shall transmit a copy of such certification to the director of
38 accounts and reports. Upon receipt of such certification, the director of
39 accounts and reports shall transfer an amount of moneys equal to such
40 certified amount from the state general fund to the county competency
41 expense fund. The secretary for aging and disability services shall transmit
42 a copy of each such certification to the director of legislative research and
43 the director of the budget.

1 (c) The secretary for aging and disability services shall develop and
2 implement a procedure to provide payments to counties pursuant to
3 subsection (b) on a quarterly basis.

4 (d) If there are no moneys available in the county competency
5 expense fund to pay any such reimbursements, the county may file a claim
6 against the state pursuant to article 9 of chapter 46 of the Kansas Statutes
7 Annotated, and amendments thereto.

8 (e) There is hereby established in the state treasury the county
9 competency expense fund that shall be administered by the secretary for
10 aging and disability services. All expenditures from the county
11 competency expense fund shall be for the purpose of reimbursing counties
12 for the costs described in subsection (a). All expenditures from such fund
13 shall be made in accordance with appropriation acts upon warrants of the
14 director of accounts and reports issued pursuant to vouchers approved by
15 the secretary for aging and disability services or the secretary's designee.

16 (f) For the purposes of this section, "county jail" means a jail
17 operated by a county or a consolidated law enforcement agency.

18 Sec. 3. K.S.A. 19-1936 is hereby repealed.

19 Sec. 4. This act shall take effect and be in force from and after its
20 publication in the statute book.