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September 25, 1979

ATTORNEY GENERAL OPINION NO. 79-212

Mr. Bruce A. Roby
Kansas Department of Social and
Rehabilitation Services
State Office Building
Topeka, Kansas 66612

Re: Criminal Procedure--Competency of Defendant to
Stand Trial--Commitment of Incompetent

Synopsis: A criminal defendant, who has been found competent to stand trial pursuant to the procedure set forth in K.S.A. 1978 Supp. 22-3303(3), may properly be held (until the time of trial) as an involuntary patient at Larned State Hospital, so long as the district court finds, upon periodic review (K.S.A. 1978 Supp. 59-2917a) or upon hearing after an application for discharge (K.S.A. 1978 Supp. 59-2923), that such defendant continues to be, beyond a reasonable doubt, a "mentally ill person," as that term is defined in K.S.A. 1978 Supp. 59-2902(1).

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Dear Mr. Roby:

You request our opinion as to whether a criminal defendant, who is found competent to stand trial pursuant to the procedure set forth in K.S.A. 1978 Supp. 22-3303(3), may be held (until the time of the trial) as an involuntary patient at Larned State Hospital under a court order previously entered pursuant to K.S.A. 1978 Supp. 59-2917.

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Pursuant to K.S.A. 1978 Supp. 59-2917a, a person involuntarily committed under K.S.A. 1978 Supp. 59-2917 must be discharged if the court finds, after a review of medical records, which review is to be conducted every 90 days, that there is "reasonable doubt that the patient continues to be a mentally ill person." The term "mentally ill person" is defined as follows in subsection (1) of K.S.A. 1978 Supp. 59-2902:

"(1) The term 'mentally ill person' shall mean any person who is mentally impaired to the extent that such person is in need of treatment and who is dangerous to himself or herself or others and

"(a) who lacks sufficient understanding or capacity to make responsible decisions with respect to his or her need for treatment, or

"(b) who refuses to seek treatment, except that no person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone through prayer for healing shall be determined to be a mentally ill person unless substantial evidence is produced upon which the district court finds that the proposed patient is dangerous to himself or herself or others. Proof of a person's failure to meet his or her basic physical needs, to the extent that such failure threatens such person's life, shall be deemed as proof that such person is dangerous to himself or herself."

In our opinion, a criminal defendant, who was originally committed pursuant to involuntary commitment proceedings initiated under K.S.A. 1978 Supp. 22-3303(1) or (2), but who has subsequently been determined to be competent to stand trial pursuant to the procedure set forth in K.S.A. 1978 Supp. 22-3303(3), must be discharged from a treatment facility if the court finds upon periodic review (K.S.A. 1978 Supp. 59-2917a) or upon hearing after an application for discharge (K.S.A. 1978 Supp. 59-2923) that there is reasonable doubt that such defendant continues to be a mentally ill person.

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However, it should be recognized that a finding that a defendant is competent to stand trial is not, ipso facto, a determination that there is reasonable doubt that such defendant continues to be a "mentally ill" person. The test of competency of an accused is set forth in K.S.A. 22-3301, which provides as follows:

"(1) For the purpose of this article, a person is 'incompetent to stand trial' when he is charged with a crime and, because of mental illness or defect is unable:

"(a) to understand the nature and purpose of the proceedings against him; or

"(b) to make or assist in making his defense.

"(2) Whenever the words 'competent,' 'competency,' 'incompetent' and 'incompetency' are used without qualification in this article, they shall refer to the defendant's competency or incompetency to stand trial, as defined in subsection (1) of this section."

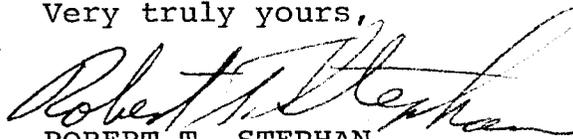
In State v. Gilder, 223 Kan. 220 (1977), 224, all four doctors who examined the defendant found that he had severe emotional problems and was mentally ill; yet, the doctors disagreed on his competency to stand trial, and the court upheld the trial judge's finding that the defendant was competent under the test set forth in K.S.A. 22-3301. It is, therefore, clear that a finding of competency to stand trial is not necessarily inconsistent with a determination that a defendant is "mentally ill" for purposes of involuntary commitment under Article 29 of Chapter 59 of Kansas Statutes Annotated.

In summary, it is our opinion that a criminal defendant, who has been found competent to stand trial pursuant to the procedure set forth in K.S.A. 1978 Supp. 22-3303(3), may properly be held (until the time of trial) as an involuntary patient at Larned State Hospital, so long as the district court finds, upon periodic review (K.S.A. 1978 Supp. 59-2917a)

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or upon hearing after an application for discharge (K.S.A. 1978 Supp. 59-2923), that such defendant continues to be, beyond a reasonable doubt, a "mentally ill person," as that term is defined in K.S.A. 1978 Supp. 59-2902(1).

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm