

SENATE BILL No. 495

By Committee on Judiciary

2-4

AN ACT concerning sexually violent predators; relating to persons in the sexual predator treatment program at the Larned state hospital; allowing certain extremely ill or physically or mentally incapacitated persons to be considered for transfer; annual review by the court; amending K.S.A. 2001 Supp. 59-29a08, 59-29a10 and 59-29a18 and repealing the existing sections.

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

Section 1. K.S.A. 2001 Supp. 59-29a08 is hereby amended to read as follows: 59-29a08. (a) Each person committed under this act shall have a current examination of the person's mental condition made once every year. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional ~~person~~ to examine such person, and such expert or professional ~~person~~ shall have access to all records concerning the person. The yearly report shall be provided to the court that committed the person under this act. The court shall conduct an annual review of the status of the committed person. Nothing contained in this act shall prohibit the person from otherwise petitioning the court for discharge at this hearing. The secretary of the department of social and rehabilitation services shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall forward the notice and waiver form to the court with the annual report. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing.

(b) If the court at the hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder *or other circumstances, including deterioration of the person's physical health*, has so changed that the person is safe to be placed in transitional release, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The attorney general shall represent the state and shall have a right to a jury trial and to have the committed

1 person evaluated by experts chosen by the state. The committed person
2 shall also have the right to have experts evaluate the person on the per-
3 son's behalf and the court shall appoint an expert if the person is indigent
4 and requests an appointment. The burden of proof at the hearing shall
5 be upon the state to prove beyond a reasonable doubt that the committed
6 person's mental abnormality or personality disorder *or other circum-*
7 *stances* remains such that the person is not safe to be placed in transitional
8 release and if transitionally released is likely to engage in acts of sexual
9 violence.

10 (c) If, after the hearing, the court or jury is convinced beyond a rea-
11 sonable doubt that the person is not appropriate for transitional release,
12 the court shall order that the person remain in secure commitment. Oth-
13 erwise, the court shall order that the person be placed in transitional
14 release.

15 (d) If the court determines that the person should be placed in transi-
16 tional release, the secretary shall transfer the person to ~~the~~ *such* transi-
17 tional release program *or services as the secretary may have, find or*
18 *develop for that person.* ~~The secretary may contract for services to be~~
19 ~~provided in the transitional release program.~~ During any period the per-
20 son is in transitional release, that person shall comply with any rules or
21 regulations the secretary may establish for this program and every direc-
22 tive of the treatment staff of the transitional release program.

23 (e) *The secretary may contract for services to be provided to any*
24 *person transferred to transitional release. At the request of the secretary,*
25 *the board of county commissioners for the county in which the person*
26 *was committed for treatment under this act shall assist the secretary in*
27 *securing such services.*

28 ~~(f)~~ (f) At any time during which the person is in the transitional re-
29 lease program and the treatment staff determines that the person has
30 violated any rule, regulation or directive associated with the transitional
31 release program, the treatment staff may remove the person from the
32 transitional release program and return the person to the secure com-
33 mitment facility, or may request the district court to issue an emergency
34 ex parte order directing any law enforcement officer to take the person
35 into custody and return the person to the secure commitment facility.
36 Any such request may be made verbally or by telephone, but shall be
37 followed in written or facsimile form delivered to the court by not later
38 than 5:00 p.m. of the first day the district court is open for the transaction
39 of business after the verbal or telephonic request was made.

40 ~~(g)~~ (g) Upon the person being returned to the secure commitment
41 facility from the transitional release program, notice thereof shall be given
42 by the secretary to the court. The court shall set the matter for a hearing
43 within two working days of receipt of notice of the person's having been

1 returned to the secure commitment facility and cause notice thereof to
2 be given to the attorney general, the person and the secretary. The at-
3 torney general shall have the burden of proof to show probable cause
4 that the person violated conditions of transitional release. The hearing
5 shall be to the court. At the conclusion of the hearing the court shall issue
6 an order returning the person to the secure commitment facility or to the
7 transitional release program, and may order such other further conditions
8 with which the person must comply if the person is returned to the tran-
9 sitional release program.

10 Sec. 2. K.S.A. 2001 Supp. 59-29a10 is hereby amended to read as
11 follows: 59-29a10. (a) *Whenever the secretary of social and rehabilita-*
12 *tion services deems it appropriate to do so, or whenever requested by the*
13 *treatment staff, the secretary shall convene a multi-disciplinary team of*
14 *professionals, which may also include individuals representing the attor-*
15 *ney general, the secretary of corrections and the Kansas parole board, but*
16 *shall not include any individual who is then a member of the treatment*
17 *staff providing treatment to the person, who shall review the person's*
18 *progress in treatment. Based thereon, and considering the available re-*
19 *sources which might be applicable to the person, and such other factors*
20 *as the team determines appropriate, the team shall recommend to the*
21 *secretary whether the secretary should authorize the person to petition*
22 *the court for transitional release.*

23 ~~(a)~~ (b) If the secretary of the department of social and rehabilitation
24 services determines that the person's mental abnormality or personality
25 disorder has so changed that the person is not likely to commit predatory
26 acts of sexual violence if placed in transitional release, *or that for other*
27 *circumstances, including deterioration of the person's physical health,*
28 *that the person is not likely to commit predatory acts of sexual violence*
29 *if placed in transitional release, the secretary shall authorize the person*
30 *to petition the court for transitional release. The petition shall be served*
31 *upon the court and the attorney general. The court, upon receipt of the*
32 *petition for transitional release, shall order a hearing within 30 days. The*
33 *attorney general shall represent the state, and shall have the right to have*
34 *the petitioner examined by an expert or professional person of such at-*
35 *torney's choice. The hearing shall be before a jury if demanded by either*
36 *the petitioner or the attorney general. The burden of proof shall be upon*
37 *the attorney general to show beyond a reasonable doubt that the peti-*
38 *tioner's mental abnormality or personality disorder or other circumstances*
39 *remains such that the petitioner is not safe to be at large and that if placed*
40 *in transitional release is likely to commit predatory acts of sexual violence.*

41 ~~(b)~~ (c) If, after the hearing, the court is convinced beyond a reason-
42 able doubt that the person is not appropriate for transitional release, the
43 court shall order that the person remain in secure commitment. Other-

1 wise, the court shall order that the person be placed in transitional release.
2 ~~(e)~~ (d) The provisions of subsections (d), (e) and (f) of K.S.A. 59-
3 29a08 and amendments thereto shall apply to a transitional release pur-
4 suant to this section.

5 Sec. 3. K.S.A. 2001 Supp. 59-29a18 is hereby amended to read as
6 follows: 59-29a18. (a) During any period the person is in transitional re-
7 lease, the person committed under this act at least annually, and at any
8 other time deemed appropriate by the treatment staff, shall be examined
9 by the treatment staff, *or by such other multi-disciplinary team of pro-*
10 *professionals as the secretary of social and rehabilitation services deems ap-*
11 *propriate*, to determine if the person's mental abnormality or personality
12 disorder, *or other circumstances, including the person's physical health,*
13 has so changed so as to warrant such person being considered for condi-
14 tional release. The treatment staff *or multi-disciplinary team* shall for-
15 ward a report of its examination *and findings* to the court. The court shall
16 review the same. If the court determines that probable cause exists to
17 believe that the person's mental abnormality or personality disorder has
18 so changed, *or other circumstances, including deterioration of the per-*
19 *son's physical health*, that the person is safe to be placed in conditional
20 release, the court shall then set a hearing on the issue. The attorney
21 general shall have the burden of proof to show beyond a reasonable doubt
22 that the person's mental abnormality or personality disorder, *or other*
23 *circumstances*, remains such that the person is not safe to be at large and
24 that if placed on conditional release is likely to engage in repeat acts of
25 sexual violence. The person shall have the same rights as enumerated in
26 K.S.A. 59-29a06 and amendments thereto. Subsequent to either a court
27 review or a hearing, the court shall issue an appropriate order with find-
28 ings of fact. The order of the court shall be provided to the attorney
29 general, the person and the secretary.

30 (b) If, after the hearing, the court is convinced beyond a reasonable
31 doubt that the person is not appropriate for conditional release, the court
32 shall order that the person remain either in secure commitment or in
33 transitional release. Otherwise, the court shall order that the person be
34 placed on conditional release.

35 Sec. 4. K.S.A. 2001 Supp. 59-29a08, 59-29a10 and 59-29a18 are
36 hereby repealed.

37 Sec. 5. This act shall take effect and be in force from and after its
38 publication in the statute book.

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