

HOUSE Substitute for SENATE BILL No. 27

By Committee on Corrections and Juvenile Justice

3-24

AN ACT concerning the civil commitment of sexually violent predators; amending K.S.A. 2002 Supp. 59-29a01, 59-29a04, 59-29a06, 59-29a07, 59-29a08 and 59-29a10 and repealing the existing sections.

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

Section 1. K.S.A. 2002 Supp. 59-29a01 is hereby amended to read as follows: 59-29a01. The legislature finds that there exists an extremely dangerous group of sexually violent predators who have a mental abnormality or personality disorder and who are likely to engage in repeat acts of sexual violence if not treated for their mental abnormality or personality disorder. Because the existing civil commitment procedures under K.S.A. 59-2901 *et seq.* and amendments thereto are inadequate to address the special needs of sexually violent predators and the risks they present to society, the legislature determines that a separate involuntary civil commitment process for the potentially long-term control, care and treatment of sexually violent predators is necessary. The legislature also determines that because of the nature of the mental abnormalities or personality disorders from which sexually violent predators suffer, and the dangers they present, it is necessary to house involuntarily committed sexually violent predators in an environment separate from persons involuntarily committed under K.S.A. 59-2901 *et seq.* and amendments thereto. *Notwithstanding any other evidence of legislative intent, it is hereby declared that any time requirements set forth in K.S.A. 59-29a01 et seq., and amendments thereto, either as originally enacted or as amended, are intended to be directory and not mandatory and serve as guidelines for conducting proceedings under K.S.A. 59-29a01 et seq., and amendments thereto.*

Sec. 2. K.S.A. 2002 Supp. 59-29a04 is hereby amended to read as follows: 59-29a04. (a) When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee appointed as provided in subsection (e) of K.S.A. 59-29a03 and amendments thereto has determined that the person meets the definition of a sexually violent predator, the attorney general ~~may file a petition,~~ within 75 days of the date the attorney general received the written notice by the agency of jurisdiction as provided in subsection (a) of K.S.A. 59-29a03

1 and amendments thereto, *may file a petition in the county where the*
2 *person was convicted of or charged with a sexually violent offense* alleging
3 that the person is a sexually violent predator and stating sufficient facts
4 to support such allegation.

5 (b) The provisions of this section are not jurisdictional, and failure to
6 comply with such provisions in no way prevents the attorney general from
7 proceeding against a person otherwise subject to the provision of K.S.A.
8 59-29a01 *et seq.*, and amendments thereto.

9 Sec. 3. K.S.A. 2002 Supp. 59-29a06 is hereby amended to read as
10 follows: 59-29a06. (a) Within 60 days after the completion of any hearing
11 held pursuant to K.S.A. 59-29a05 and amendments thereto, the court
12 shall conduct a trial to determine whether the person is a sexually violent
13 predator. The trial may be continued upon the request of either party
14 and a showing of good cause, or by the court on its own motion in the
15 due administration of justice, and when the respondent will not be sub-
16 stantially prejudiced.

17 (b) At all stages of the proceedings under ~~this act~~ K.S.A. 59-29a01 *et*
18 *seq.*, and amendments thereto, any person subject to ~~this act~~ K.S.A. 59-
19 29a01 *et seq.*, and amendments thereto, shall be entitled to the assistance
20 of counsel, and if the person is indigent, the court shall appoint counsel
21 to assist such person. Whenever any person is subjected to an examination
22 under ~~this act~~ K.S.A. 59-29a01 *et seq.*, and amendments thereto, such
23 person may retain experts or professional persons to perform an exami-
24 nation of such person's behalf. When the person wishes to be examined
25 by a qualified expert or professional person of such person's own choice,
26 such examiner shall be permitted to have reasonable access to the person
27 for the purpose of such examination, as well as to all relevant medical and
28 psychological records and reports. In the case of a person who is indigent,
29 the court, upon the person's request, shall determine whether the services
30 are necessary and reasonable compensation for such services. If the court
31 determines that the services are necessary and the expert or professional
32 person's requested compensation for such services is reasonable, the
33 court shall assist the person in obtaining an expert or professional person
34 to perform an examination or participate in the trial on the person's be-
35 half. The court shall approve payment for such services upon the filing
36 of a certified claim for compensation supported by a written statement
37 specifying the time expended, services rendered, expenses incurred on
38 behalf of the person and compensation received in the same case or for
39 the same services from any other source.

40 (c) The person, the attorney general, or the judge shall have the right
41 to demand that the trial be before a jury. Such demand for the trial to
42 be before a jury shall be filed, in writing, at least four days prior to trial.
43 Number and selection of jurors shall be determined as provided in K.S.A.

1 22-3403, and amendments thereto. If no demand is made, the trial shall
2 be before the court.

3 (d) A jury shall consist of 12 jurors unless the parties agree in writing
4 with the approval of the court that the jury shall consist of any number
5 of jurors less than 12 jurors. The person and the attorney general shall
6 each have eight peremptory challenges, or in the case of a jury of less
7 than 12 jurors, a proportionally equal number of peremptory challenges.

8 (e) *The provisions of this section are not jurisdictional, and failure to*
9 *comply with such provisions in no way prevents the attorney general from*
10 *proceeding against a person otherwise subject to the provision of K.S.A.*
11 *59-29a01 et seq., and amendments thereto.*

12 Sec. 4. K.S.A. 2002 Supp. 59-29a07 is hereby amended to read as
13 follows: 59-29a07. (a) The court or jury shall determine whether, beyond
14 a reasonable doubt, the person is a sexually violent predator. If such de-
15 termination that the person is a sexually violent predator is made by a
16 jury, such determination shall be by unanimous verdict of such jury. Such
17 determination may be appealed. If the court or jury determines that the
18 person is a sexually violent predator, the person shall be committed to
19 the custody of the secretary of social and rehabilitation services for con-
20 trol, care and treatment until such time as the person's mental abnor-
21 mality or personality disorder has so changed that the person is safe to
22 be at large. Such control, care and treatment shall be provided at a facility
23 operated by the department of social and rehabilitation services.

24 (b) At all times, persons committed for control, care and treatment
25 by the department of social and rehabilitation services pursuant to ~~this~~
26 ~~act~~ K.S.A. 59-29a01 et seq., and amendments thereto, shall be kept in a
27 secure facility and such persons shall be segregated at all times from any
28 other patient under the supervision of the secretary of social and reha-
29 bilitation services and commencing June 1, 1995, such persons committed
30 pursuant to ~~this act~~ K.S.A. 59-29a01 et seq., and amendments thereto,
31 shall be kept in a facility or building separate from any other patient under
32 the supervision of the secretary.

33 (c) The department of social and rehabilitation services is authorized
34 to enter into an interagency agreement with the department of correc-
35 tions for the confinement of such persons. Such persons who are in the
36 confinement of the secretary of corrections pursuant to an interagency
37 agreement shall be housed and managed separately from offenders in the
38 custody of the secretary of corrections, and except for occasional instances
39 of supervised incidental contact, shall be segregated from such offenders.

40 (d) If any person while committed to the custody of the secretary
41 pursuant to ~~this act~~ K.S.A. 59-29a01 et seq., and amendments thereto,
42 shall be taken into custody by any law enforcement officer as defined in
43 K.S.A. 21-3110 and amendments thereto pursuant to any parole revoca-

1 tion proceeding or any arrest or conviction for a criminal offense of any
2 nature, upon the person's release from the custody of any law enforce-
3 ment officer, the person shall be returned to the custody of the secretary
4 for further treatment pursuant to ~~this act~~ K.S.A. 59-29a01 *et seq.*, and
5 *amendments thereto*. During any such period of time a person is not in
6 the actual custody or supervision of the secretary, the secretary shall be
7 excused from the provisions of K.S.A. 59-29a08 and amendments thereto,
8 with regard to providing that person an annual examination, annual notice
9 and annual report to the court, except that the secretary shall give notice
10 to the court as soon as reasonably possible after the taking of the person
11 into custody that the person is no longer in treatment pursuant to ~~this act~~
12 K.S.A. 59-29a01 *et seq.*, and *amendments thereto*, and notice to the court
13 when the person is returned to the custody of the secretary for further
14 treatment.

15 (e) If the court or jury is not satisfied beyond a reasonable doubt that
16 the person is a sexually violent predator, the court shall direct the person's
17 release.

18 (f) Upon a mistrial, the court shall direct that the person be held at
19 an appropriate secure facility, including, but not limited to, a county jail,
20 until another trial is conducted. Any subsequent trial following a mistrial
21 shall be held within 90 days of the previous trial, unless such subsequent
22 trial is continued as provided in K.S.A. 59-29a06 and amendments
23 thereto.

24 ~~(b)~~ (g) If the person charged with a sexually violent offense has been
25 found incompetent to stand trial, and is about to be released pursuant to
26 K.S.A. 22-3305 and amendments thereto, and such person's commitment
27 is sought pursuant to subsection (a), the court shall first hear evidence
28 and determine whether the person did commit the act or acts charged.
29 The hearing on this issue must comply with all the procedures specified
30 in this section. In addition, the rules of evidence applicable in criminal
31 cases shall apply, and all constitutional rights available to defendants at
32 criminal trials, other than the right not to be tried while incompetent,
33 shall apply. After hearing evidence on this issue, the court shall make
34 specific findings on whether the person did commit the act or acts
35 charged, the extent to which the person's incompetence or developmental
36 disability affected the outcome of the hearing, including its effect on the
37 person's ability to consult with and assist counsel and to testify on such
38 person's own behalf, the extent to which the evidence could be recon-
39 structed without the assistance of the person and the strength of the
40 prosecution's case. If after the conclusion of the hearing on this issue, the
41 court finds, beyond a reasonable doubt, that the person did commit the
42 act or acts charged, the court shall enter a final order, appealable by the
43 person, on that issue, and may proceed to consider whether the person

1 should be committed pursuant to this section.

2 Sec. 5. K.S.A. 2002 Supp. 59-29a08 is hereby amended to read as
3 follows: 59-29a08. (a) Each person committed under ~~this act~~ K.S.A. 59-
4 *29a01 et seq., and amendments thereto*, shall have a current examination
5 of the person's mental condition made once every year. *The secretary*
6 *shall provide the committed person with an annual written notice of the*
7 *person's right to petition the court for release over the secretary's objec-*
8 *tion. The notice shall contain a waiver of rights. The secretary shall also*
9 *forward the annual report, as well as the annual notice and waiver form,*
10 *to the court that committed the person under K.S.A. 59-29a01 et seq., and*
11 *amendments thereto.* The person may retain, or if the person is indigent
12 and so requests the court may appoint a qualified professional person to
13 examine such person, and such expert or professional person shall have
14 access to all records concerning the person. ~~The yearly report shall be~~
15 ~~provided to the court that committed the person under this act.~~ The court
16 *that committed the person under K.S.A. 59-29a01 et seq., and amend-*
17 *ments thereto,* shall then conduct an annual review of the status of the
18 committed person. ~~Nothing contained in this act shall prohibit the person~~
19 ~~from otherwise petitioning the court for discharge at this hearing. The~~
20 ~~secretary of the department of social and rehabilitation services shall pro-~~
21 ~~vide the committed person with an annual written notice of the person's~~
22 ~~right to petition the court for release over the secretary's objection. The~~
23 ~~notice shall contain a waiver of rights. The secretary shall forward the~~
24 ~~notice and waiver form to the court with the annual report~~ *person's mental*
25 *condition.* The committed person shall have a right to have an attorney
26 represent the person at the hearing but the person is not entitled to be
27 present at the hearing.

28 (b) *Nothing contained in K.S.A. 59-29a01 et seq., and amendments*
29 *thereto, shall prohibit the person from otherwise petitioning the court for*
30 *discharge at this hearing.*

31 (c) If the court at the hearing determines that probable cause exists
32 to believe that the person's mental abnormality or personality disorder
33 has so changed that the person is safe to be placed in transitional release,
34 then the court shall set a hearing on the issue. At the hearing, the com-
35 mitted person shall be entitled to be present and entitled to the benefit
36 of all constitutional protections that were afforded the person at the initial
37 commitment proceeding. The attorney general shall represent the state
38 and shall have a right to a jury trial and to have the committed person
39 evaluated by experts chosen by the state. The committed person shall also
40 have the right to have experts evaluate the person on the person's behalf
41 and the court shall appoint an expert if the person is indigent and requests
42 an appointment. The burden of proof at the hearing shall be upon the
43 state to prove beyond a reasonable doubt that the committed person's

1 mental abnormality or personality disorder remains such that the person
2 is not safe to be placed in transitional release and if transitionally released
3 is likely to engage in acts of sexual violence.

4 ~~(e)~~ (d) If, after the hearing, the court or jury is convinced beyond a
5 reasonable doubt that the person is not appropriate for transitional re-
6 lease, the court shall order that the person remain in secure commitment.
7 Otherwise, the court shall order that the person be placed in transitional
8 release.

9 ~~(d)~~ (e) If the court determines that the person should be placed in
10 transitional release, the secretary shall transfer the person to the transi-
11 tional release program. The secretary may contract for services to be
12 provided in the transitional release program. During any period the per-
13 son is in transitional release, that person shall comply with any rules or
14 regulations the secretary may establish for this program and every direc-
15 tive of the treatment staff of the transitional release program.

16 ~~(e)~~ (f) At any time during which the person is in the transitional re-
17 lease program and the treatment staff determines that the person has
18 violated any rule, regulation or directive associated with the transitional
19 release program, the treatment staff may remove the person from the
20 transitional release program and return the person to the secure com-
21 mitment facility, or may request the district court to issue an emergency
22 ex parte order directing any law enforcement officer to take the person
23 into custody and return the person to the secure commitment facility.
24 Any such request may be made verbally or by telephone, but shall be
25 followed in written or facsimile form delivered to the court by not later
26 than 5:00 p.m. of the first day the district court is open for the transaction
27 of business after the verbal or telephonic request was made.

28 ~~(f)~~ (g) Upon the person being returned to the secure commitment
29 facility from the transitional release program, notice thereof shall be given
30 by the secretary to the court. The court shall set the matter for a hearing
31 within two working days of receipt of notice of the person's having been
32 returned to the secure commitment facility and cause notice thereof to
33 be given to the attorney general, the person and the secretary. The at-
34 torney general shall have the burden of proof to show probable cause
35 that the person violated conditions of transitional release. The hearing
36 shall be to the court. At the conclusion of the hearing the court shall issue
37 an order returning the person to the secure commitment facility or to the
38 transitional release program, and may order such other further conditions
39 with which the person must comply if the person is returned to the tran-
40 sitional release program.

41 Sec. 6. K.S.A. 2002 Supp. 59-29a10 is hereby amended to read as
42 follows: 59-29a10. (a) If the secretary of the department of social and
43 ~~rehabilitation services~~ determines that the person's mental abnormality

1 or personality disorder has so changed that the person is not likely to
2 ~~commit predatory~~ *engage in repeat* acts of sexual violence if placed in
3 transitional release, the secretary shall authorize the person to petition
4 the court for transitional release. The petition shall be served upon the
5 court and the attorney general. The court, upon receipt of the petition
6 for transitional release, shall order a hearing within 30 days. The attorney
7 general shall represent the state, and shall have the right to have the
8 petitioner examined by an expert or professional person of such attorney's
9 choice. The hearing shall be before a jury if demanded by either the
10 petitioner or the attorney general. The burden of proof shall be upon the
11 attorney general to show beyond a reasonable doubt that the petitioner's
12 mental abnormality or personality disorder remains such that the peti-
13 tioner is not safe to be at large and that if placed in transitional release is
14 likely to ~~commit predatory~~ *engage in repeat* acts of sexual violence.

15 (b) If, after the hearing, the court is convinced beyond a reasonable
16 doubt that the person is not appropriate for transitional release, the court
17 shall order that the person remain in secure commitment. Otherwise, the
18 court shall order that the person be placed in transitional release.

19 (c) The provisions of subsections ~~(d)~~, (e) ~~and~~, (f) *and* (g) of K.S.A.
20 59-29a08 and amendments thereto shall apply to a transitional release
21 pursuant to this section.

22 New Sec. 7. If any provision of this act or the application thereof to
23 any person or circumstances is held invalid, the invalidity shall not affect
24 other provisions or applications of the act which can be given effect with-
25 out the invalid provisions or application and, to this end, the provisions
26 of this act are severable.

27 Sec. 8. K.S.A. 2002 Supp. 59-29a01, 59-29a04, 59-29a06, 59-29a07,
28 59-29a08 and 59-29a10 are hereby repealed.

29 Sec. 9. This act shall take effect and be in force from and after its
30 publication in the statute book.

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