

SENATE BILL No. 243

By Committee on Judiciary

2-6

1 AN ACT concerning criminal procedure; relating to competency to stand
2 trial; requiring the court to make certain findings in treatment orders;
3 requiring outpatient examination and evaluation in certain
4 circumstances; amending K.S.A. 22-3302 and 22-3303 and repealing
5 the existing sections.
6

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

8 Section 1. K.S.A. 22-3302 is hereby amended to read as follows: 22-
9 3302. (a) At any time after the defendant has been charged with a crime
10 and before pronouncement of sentence, the defendant, the defendant's
11 counsel or the prosecuting attorney may request a determination of the
12 defendant's competency to stand trial. If, upon the request of either party
13 or upon the judge's own knowledge and observation, the judge before
14 whom the case is pending finds that there is reason to believe that the
15 defendant is incompetent to stand trial, the proceedings shall be suspended
16 and a hearing conducted to determine the competency of the defendant.

17 (b) (1) *If a defendant is charged with a misdemeanor, the court shall*
18 *order the examination and evaluation of a defendant's competency to*
19 *stand trial on an outpatient basis in an appropriate state, county or*
20 *private institution or facility.*

21 (2) If the defendant is charged with a felony;

22 (A) The hearing to determine the competency of the defendant shall
23 be conducted by a district judge; and

24 (B) *the court may order the examination and evaluation of a*
25 *defendant's competency to stand trial on an outpatient basis in an*
26 *appropriate state, county or private institution and shall not order*
27 *inpatient examination and evaluation services at a state hospital or the*
28 *state security hospital to determine competency unless the court holds a*
29 *hearing and issues an order stating:*

30 (i) *The facts upon which the court determined outpatient competency,*
31 *examination and evaluation services cannot be conducted in an*
32 *appropriate state, county or private institution or facility;*

33 (ii) *the potential length of incarceration the defendant could be*
34 *sentenced to serve for each offense;*

35 (iii) *the anticipated length of time for completion of inpatient*
36 *examination and evaluation services;*

1 (iv) whether the defendant is charged with an off-grid or nondrug
2 severity level 1 through 3 felony or a violation of K.S.A. 21-3504, 21-3511,
3 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A. 21-5505(b),
4 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments
5 thereto; and

6 (v) the conditions that would require a defendant who is currently on
7 bond to be committed for inpatient examination and evaluation, if
8 applicable.

9 (3) The court shall provide a copy of each order for:

10 (A) Outpatient competency examination and evaluation to be
11 conducted in an appropriate state, county or private institution or facility
12 to the secretary for aging and disability services or the secretary's
13 designee; and

14 (B) inpatient competency examination and evaluation to be
15 conducted at the state security hospital or its agent to the state security
16 hospital.

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

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

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

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

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

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

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

10 (d) *No statement made by the defendant in the course of any*
11 *examination provided for by this section, whether or not the defendant*
12 *consents to the examination, shall be admitted in evidence against the*
13 *defendant in any criminal proceeding.*

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

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

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

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

30 Sec. 2. K.S.A. 22-3303 is hereby amended to read as follows: 22-
31 3303. (a) (1) A defendant who is charged with a crime and is found to be
32 incompetent to stand trial shall be ordered for evaluation and treatment,
33 conducted on an outpatient or inpatient basis, by an appropriate state,
34 county or private institution or facility. Evaluation or restorative treatment
35 of a defendant shall not be conducted in a jail unless the administrative
36 head or law enforcement official in charge of the jail agrees to such
37 evaluation or restorative treatment being conducted in such jail.

38 (2) An evaluation and treatment may be ordered to be conducted on
39 an outpatient basis in person or by use of available electronic means while
40 the defendant is in jail, at any secure location, on pretrial release or in any
41 other appropriate setting.

42 (3) For a defendant charged with a misdemeanor offense, outpatient
43 evaluation and treatment ~~may~~ *shall* be ordered to be conducted by an

1 appropriate state, county or private institution or facility *unless*:

2 (A) *The defendant is held in jail and the official in charge of the jail*
3 *has determined that the jail does not have the necessary resources to*
4 *accommodate the evaluation and treatment of the defendant by an*
5 *appropriate provider in the jail setting; or*

6 (B) *the court holds a hearing and makes a finding that inpatient*
7 *evaluation and treatment is necessary after considering:*

8 (i) *The facts upon which the court determined inpatient evaluation*
9 *and treatment is necessary;*

10 (ii) *the potential length of incarceration the defendant could be*
11 *sentenced to serve for each offense;*

12 (iii) *the anticipated length of time for completion of inpatient*
13 *examination and evaluation services; and*

14 (iv) *the conditions that would require a defendant who is currently on*
15 *bond to be committed for inpatient examination and evaluation, if*
16 *applicable.*

17 (4) For a defendant charged with a felony offense,:

18 (A) Outpatient evaluation and treatment may be ordered to be
19 conducted by an appropriate state, county or private institution or facility,;

20 ~~(5)(B) For a defendant charged with a felony offense,~~ a commitment
21 to the state security hospital or its agent or a state hospital or its agent may
22 by conducted on ~~a~~ inpatient basis or, if the defendant meets the
23 screening criteria established by the state security hospital, on an
24 outpatient basis; or

25 (C) *a commitment to the state security hospital or its agent or a state*
26 *hospital or its agent for inpatient competency evaluation and treatment*
27 *may only be ordered after the court holds a hearing and issues an order*
28 *stating:*

29 (i) *The facts upon which the court determined that outpatient*
30 *competency evaluation and treatment services ordered by an appropriate*
31 *state, county or private institution or facility are not appropriate as a first*
32 *option for the defendant with commitment for inpatient competency*
33 *evaluation and treatment services at the state security hospital or its agent*
34 *or the state hospital or its agency being ordered as an alternative if*
35 *outpatient services are terminated pursuant to subsection (d);*

36 (ii) *the potential length of incarceration the defendant could be*
37 *sentenced to serve for each offense;*

38 (iii) *the anticipated length of time for completion of inpatient*
39 *examination and evaluation services;*

40 (iv) *whether the defendant is charged with an off-grid or nondrug*
41 *severity level 1 through 3 felony or a violation of K.S.A. 21-3504, 21-3511,*
42 *21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A 21-5505(b),*
43 *21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments*

1 *thereto; and*

2 *(v) the conditions that would require a defendant who is currently on*
3 *bond to be committed for inpatient examination and evaluation, if*
4 *applicable.*

5 ~~(6)~~(5) *At the commencement of outpatient treatment at an*
6 *appropriate state, county or private institution or facility that is not a jail*
7 *or other secure setting, the institution or facility conducting the treatment*
8 *shall notify the prosecuting attorney in the county where the criminal*
9 *proceeding is pending for the purpose of providing victim notification. If*
10 *notification was provided to the victim at the time the defendant was*
11 *released on bond and no change in the defendant's bond status or address*
12 *occurred, no additional victim notification is required when outpatient*
13 *competency evaluation and treatment is commenced.*

14 *(6) The court shall provide a copy of each order for:*

15 *(A) Outpatient competency examination and evaluation to be*
16 *conducted in an appropriate state, county or private institution or facility*
17 *to the secretary for aging and disability services or the secretary's*
18 *designee; and*

19 *(B) inpatient competency examination and evaluation to be*
20 *conducted at the state security hospital or its agent to the state security*
21 *hospital.*

22 (b) (1) Except as provided in subsection (d), if the defendant is
23 ordered to receive an evaluation and treatment on an outpatient basis
24 conducted by an appropriate state, county or private institution or facility,
25 the chief medical officer of such institution or head of such facility shall
26 certify to the court, within 90 days after the commencement of outpatient
27 treatment, whether the defendant has a substantial probability of attaining
28 competency to stand trial in the foreseeable future. The court shall set a
29 hearing within 21 days after certification unless exceptional circumstances
30 warrant delay, for the purpose of determining competency.

31 (2) If such probability does exist, the court shall order the defendant
32 to remain in jail or at a secure location, on pretrial release pursuant to
33 K.S.A. 22-2802, and amendments thereto, or at an appropriate setting until
34 the defendant attains competency to stand trial or for a period of six
35 months from the date of the commencement of outpatient treatment,
36 whichever occurs first. If such probability does not exist, the court shall
37 order the prosecuting attorney where the charges are filed to commence
38 involuntary commitment proceedings pursuant to article 29 of chapter 59
39 of the Kansas Statutes Annotated, and amendments thereto, within 21 days
40 of receipt of the certification from the chief medical officer of the
41 institution or head of the facility unless exceptional circumstances warrant
42 delay. When a defendant is charged with any off-grid felony, any nondrug
43 severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-

1 3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A. 21-
2 5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and
3 amendments thereto, and commitment proceedings have commenced, for
4 such proceeding, "mentally ill person subject to involuntary commitment
5 for care and treatment" means a mentally ill person, as defined in K.S.A.
6 59-2946(e), and amendments thereto, who is likely to cause harm to self or
7 others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The
8 other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not
9 apply.

10 (3) If a defendant who was found to have had a substantial
11 probability of attaining competency to stand trial, as provided in paragraph
12 (2), has not attained competency to stand trial within six months from the
13 date of the original commitment, the court shall order the prosecuting
14 attorney where the charges are filed or the secretary for aging and
15 disability services to commence involuntary commitment proceedings
16 pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and
17 amendments thereto, within 21 days of receipt of the certification from the
18 chief medical officer of the institution or the head of the facility unless
19 exceptional circumstances warrant delay. When a defendant is charged
20 with any off-grid felony, any nondrug severity level 1 through 3 felony, or
21 a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719,
22 prior to their repeal, K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-
23 5604(b) or 21-5812(b), and amendments thereto, and commitment
24 proceedings have commenced, for such proceeding, "mentally ill person
25 subject to involuntary commitment for care and treatment" means a
26 mentally ill person, as defined in K.S.A. 59-2946(e), and amendments
27 thereto, who is likely to cause harm to self or others, as defined in K.S.A.
28 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.
29 59-2946(f), and amendments thereto, shall not apply.

30 (4) When reasonable grounds exist to believe that a defendant who
31 has been adjudged incompetent to stand trial is competent, the court in
32 which the criminal case is pending shall conduct a hearing in accordance
33 with K.S.A. 22-3302, and amendments thereto, to determine the person's
34 present mental condition. Such court shall give reasonable notice of such
35 hearings to the prosecuting attorney, the defendant and the defendant's
36 attorney of record, if any. The prosecuting attorney shall provide victim
37 notification. If the court, following such hearing, finds the defendant to be
38 competent, the proceedings pending against the defendant shall be
39 resumed.

40 (5) A defendant committed to a public institution or facility under the
41 provisions of this section who is thereafter sentenced for the crime charged
42 at the time of commitment shall be credited with all of the time during
43 which the defendant was committed and confined in such public institution

1 or facility.

2 (c) (1) Except as provided in subsection (d), if a defendant is ordered
3 or met criteria to receive an evaluation and treatment on an outpatient
4 basis conducted by the state security hospital or its agent or a state hospital
5 or its agent, the chief medical officer shall certify to the court, within 90
6 days after commencement of treatment, whether the defendant has a
7 substantial probability of attaining competency to stand trial in the
8 foreseeable future.

9 (2) If such probability does exist, the court shall order the defendant
10 to remain in jail or at a secure location, on pretrial release pursuant to
11 K.S.A. 22-2802, and amendments thereto, or at an appropriate setting until
12 the defendant attains competency to stand trial or for a period of six
13 months from the date of the commencement of outpatient treatment,
14 whichever occurs first. If such probability does not exist, the court shall
15 order the prosecuting attorney where the charges are filed or the secretary
16 for aging and disability services to commence involuntary commitment
17 proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes
18 Annotated, and amendments thereto, within 21 days of receipt of the
19 certification from the chief medical officer of the institution or the head of
20 the facility unless exceptional circumstances warrant delay. When a
21 defendant is charged with any off-grid felony, any nondrug severity level 1
22 through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-
23 3603 or 21-3719, prior to their repeal, or K.S.A. 21-5505(b), 21-5506(b),
24 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto, and
25 commitment proceedings have commenced, for such proceeding,
26 "mentally ill person subject to involuntary commitment for care and
27 treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e),
28 and amendments thereto, who is likely to cause harm to self or others, as
29 defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other
30 provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

31 (3) If a defendant who was found to have had a substantial
32 probability of attaining competency to stand trial, as provided in paragraph
33 (2), has not attained competency to stand trial within six months from the
34 date of the original commitment, the court shall order the prosecuting
35 attorney where the charges are filed or the secretary for aging and
36 disability services to commence involuntary commitment proceedings
37 pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and
38 amendments thereto, within 21 days of receipt of the certification from the
39 chief medical officer of the institution or the head of the facility unless
40 exceptional circumstances warrant delay. When a defendant is charged
41 with any off-grid felony, any nondrug severity level 1 through 3 felony or
42 a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719,
43 prior to their repeal, or K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-

1 5604(b) or 21-5812(b), and amendments thereto, and commitment
2 proceedings have commenced, for such proceeding, "mentally ill person
3 subject to involuntary commitment for care and treatment" means a
4 mentally ill person, as defined in K.S.A. 59-2946(e), and amendments
5 thereto, who is likely to cause harm to self or others, as defined in K.S.A.
6 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.
7 59-2946(f), and amendments thereto, shall not apply.

8 (4) When reasonable grounds exist to believe that a defendant who
9 has been adjudged incompetent to stand trial is competent, the court in
10 which the criminal case is pending shall conduct a hearing in accordance
11 with K.S.A. 22-3302, and amendments thereto, to determine the person's
12 present mental condition. Such court shall give reasonable notice of such
13 hearings to the prosecuting attorney, the defendant and the defendant's
14 attorney of record, if any. The prosecuting attorney shall provide victim
15 notification. If the court, following such hearing, finds the defendant to be
16 competent, the proceedings pending against the defendant shall be
17 resumed.

18 (5) A defendant committed to a public institution or facility under the
19 provisions of this section who is thereafter sentenced for the crime charged
20 at the time of commitment shall be credited with all of the time during
21 which the defendant was committed and confined in such public institution
22 or facility.

23 (d) (1) If the defendant is ordered or met criteria to receive an
24 evaluation and treatment on an outpatient basis and the chief medical
25 officer of the appropriate state, county or private institution or facility
26 determines that the defendant's mental health condition or behaviors
27 warrant terminating outpatient treatment services and commencing
28 evaluation and treatment on an inpatient basis, the chief medical officer of
29 the institution or the head of the facility shall provide a report to the court
30 within 10 days after outpatient treatment services are terminated. Such
31 report shall certify the date that outpatient treatment was terminated and
32 the reason inpatient evaluation and treatment services are recommended. A
33 copy of such report shall be provided to the chief medical officer of the
34 state security hospital. Upon receipt of such report, the court shall issue
35 any orders or warrants required to facilitate the sheriff of the county where
36 the charges are filed to take the defendant into custody and transport such
37 defendant to the state security hospital or its agent or a state hospital or its
38 agent for admission for inpatient services. The chief medical officer shall
39 submit a report pursuant to subsection (e) as to whether the defendant has
40 attained competency within 90 days of the defendant's admission to such
41 hospital for inpatient evaluation and treatment.

42 (2) The court, prosecuting attorney where criminal charges are
43 pending, the defense counsel for a defendant charged with a felony offense

1 who is receiving outpatient evaluation and treatment services and the chief
2 medical officer of any institution or the head of any facility where the
3 defendant is receiving outpatient services shall provide requested
4 documentation to the state security hospital or its agent or the state
5 hospital or its agent for the purpose of managing inpatient admission.

6 (e) (1) If the defendant is charged with a felony offense, the court
7 may order a defendant to receive inpatient evaluation and treatment at an
8 appropriate state, county or private institution or facility after considering
9 the defendant's mental condition, behaviors and the availability of
10 outpatient evaluation and treatment options. The chief medical officer of
11 the institution or the head of the facility shall certify to the court, within 90
12 days after the commencement of inpatient treatment, whether the
13 defendant has a substantial probability of attaining competency to stand
14 trial in the foreseeable future.

15 (2) If such probability does exist, the court shall order the defendant
16 to remain in jail or at a secure location, on pretrial release pursuant to
17 K.S.A. 22-2802, and amendments thereto, or at an appropriate setting until
18 the defendant attains competency to stand trial or for a period of six
19 months from the date of the commencement of inpatient treatment,
20 whichever occurs first. If such probability does not exist, the court shall
21 order the prosecuting attorney where the charges are filed or the secretary
22 for aging and disability services to commence involuntary commitment
23 proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes
24 Annotated, and amendments thereto, within 21 days of receipt of the
25 certification from the chief medical officer of the institution or the head of
26 the facility unless exceptional circumstances warrant delay. When a
27 defendant is charged with any off-grid felony, any nondrug severity level 1
28 through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-
29 3603 or 21-3719, prior to their repeal, or K.S.A. 21-5505(b), 21-5506(b),
30 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto, and
31 commitment proceedings have commenced, for such proceeding,
32 "mentally ill person subject to involuntary commitment for care and
33 treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e),
34 and amendments thereto, who is likely to cause harm to self or others, as
35 defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other
36 provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

37 (3) If a defendant who was found to have had a substantial
38 probability of attaining competency to stand trial, as provided in paragraph
39 (2), has not attained competency to stand trial within six months from the
40 date of the original commitment, the court shall order the prosecuting
41 attorney where the charges are filed or the secretary for aging and
42 disability services to commence involuntary commitment proceedings
43 pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and

1 amendments thereto, within 21 days of receipt of the certification from the
2 chief medical officer of the institution or the head of the facility unless
3 exceptional circumstances warrant delay. When a defendant is charged
4 with any off-grid felony, any nondrug severity level 1 through 3 felony or
5 a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719,
6 prior to their repeal, or K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-
7 5604(b) or 21-5812(b), and amendments thereto, and commitment
8 proceedings have commenced, for such proceeding, "mentally ill person
9 subject to involuntary commitment for care and treatment" means a
10 mentally ill person, as defined in K.S.A. 59-2946(e), and amendments
11 thereto, who is likely to cause harm to self or others, as defined in K.S.A.
12 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.
13 59-2946(f), and amendments thereto, shall not apply.

14 (4) When reasonable grounds exist to believe that a defendant who
15 has been adjudged incompetent to stand trial is competent, the court in
16 which the criminal case is pending shall conduct a hearing in accordance
17 with K.S.A. 22-3302, and amendments thereto, to determine the person's
18 present mental condition. Such court shall give reasonable notice of such
19 hearings to the prosecuting attorney, the defendant and the defendant's
20 attorney of record, if any. The prosecuting attorney shall provide victim
21 notification. If the court, following such hearing, finds the defendant to be
22 competent, the proceedings pending against the defendant shall be
23 resumed.

24 (5) A defendant committed to a public institution or facility under the
25 provisions of this section who is thereafter sentenced for the crime charged
26 at the time of commitment shall be credited with all of the time during
27 which the defendant was committed and confined in such public institution
28 or facility.

29 (f) (1) Notwithstanding the provisions of K.S.A. 59-29a22, and
30 amendments thereto, psychotropic medications may be prescribed for any
31 defendant who is ordered or has met the criteria to receive evaluation and
32 treatment on an inpatient or outpatient basis at an appropriate state, county
33 or private institution or facility.

34 (2) Psychotropic medications shall be prescribed, ordered and
35 administered in conformity with accepted clinical practice. Psychotropic
36 medication shall be administered only upon the written order of a
37 physician or upon a verbal order noted in the defendant's medical records
38 and subsequently signed by the physician. The attending physician shall
39 regularly review the drug regimen of each defendant under such
40 physician's care and shall monitor any symptoms of harmful side effects.

41 (3) Whenever any defendant is receiving psychotropic medications
42 that alter the defendant's mental state in such a way as to adversely affect
43 the defendant's judgment or hamper the defendant in preparing for or

1 participating in any hearing provided for by this section, for two days prior
2 to and during any such hearing, the treatment institution or facility shall
3 not administer such medication or treatment unless such medication or
4 treatment is necessary to sustain the defendant's life or to protect the
5 defendant or others. Prior to the hearing, a report of all psychotropic
6 medications or other treatment that has been administered to the defendant
7 and a copy of any written consent signed by the defendant shall be
8 submitted to the court. Counsel for the defendant may preliminarily
9 examine the attending physician regarding the administration of any
10 medication to the defendant within two days of the hearing and the effect
11 that medication may have had on the defendant's judgment or ability to
12 prepare for or participate in the hearing. If the court determines that
13 medication or other treatment has been administered that adversely affects
14 the defendant's judgment or ability to prepare for or participate in the
15 hearing, the court may grant the defendant a reasonable continuance to
16 allow for the defendant to be better able to prepare for or participate in the
17 hearing. The court shall order that such medication or other treatment be
18 discontinued until the conclusion of the hearing unless the court finds that
19 such medication or other treatment is necessary to sustain the defendant's
20 life or to protect the defendant or others. If the court makes such a finding,
21 the court shall order the hearing to proceed.

22 (4) If a defendant who is charged with a felony is receiving treatment
23 pursuant to this section and is not deemed a present danger to self or others
24 objects to taking any medication prescribed for the purpose of restoring the
25 defendant to competency, the defendant's objection shall be recorded in the
26 defendant's medical record and written notice of such objection shall be
27 forwarded to the medical director of the treatment institution or facility or
28 the director's designee and to the court where the criminal charges are
29 pending. The medication may be administered over the defendant's
30 objection only if the court finds that:

31 (A) The medication is substantially unlikely to have side effects that
32 may undermine the fairness of the trial;

33 (B) the medication is medically appropriate;

34 (C) less intrusive alternatives have been considered;

35 (D) the medication is necessary to advance significantly important
36 governmental trial interests; and

37 (E) the administrative head or law enforcement official in charge of
38 the jail has agreed to having the medication administered over the
39 defendant's objection in the jail.

40 (5) No experimental medication shall be administered without the
41 consent of the defendant or such defendant's legal guardian.

42 Sec. 3. K.S.A. 22-3302 and 22-3303 are hereby repealed.

43 Sec. 4. This act shall take effect and be in force from and after its

- 1 publication in the statute book.