

**SENATE BILL No. 280**

By Committee on Judiciary

1-12

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RS - JThompson - 01/24/12

1 AN ACT concerning commitment of sexually violent predators; relating to  
2 evaluations; testimony of expert witnesses; amending K.S.A. 59-29a05  
3 and K.S.A. 2011 Supp. 59-29a06 and repealing the existing sections.  
4

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

6 Section 1. K.S.A. 59-29a05 is hereby amended to read as follows: 59-  
7 29a05. (a) Upon filing of a petition under K.S.A. 59-29a04, the judge shall  
8 determine whether probable cause exists to believe that the person named  
9 in the petition is a sexually violent predator. If such determination is made,  
10 the judge shall direct that person be taken into custody.

11 (b) Within 72 hours after a person is taken into custody pursuant to  
12 subsection (a), such person shall be provided with notice of, and an  
13 opportunity to appear in person at, a hearing to contest probable cause as  
14 to whether the detained person is a sexually violent predator. At this  
15 hearing the court shall: (1) Verify the detainer's identity; and (2) determine  
16 whether probable cause exists to believe that the person is a sexually  
17 violent predator. The state may rely upon the petition and supplement the  
18 petition with additional documentary evidence or live testimony.

19 (c) At the probable cause hearing as provided in subsection (b), the  
20 detained person shall have the following rights in addition to the rights  
21 previously specified: (1) To be represented by counsel; (2) to present  
22 evidence on such person's behalf; (3) to cross-examine witnesses who  
23 testify against such person; and (4) to view and copy all petitions and  
24 reports in the court file.

25 (d) If the probable cause determination is made, the court shall ~~direct~~  
26 that the person be transferred to an appropriate secure facility, including,  
27 but not limited to, a county jail, for an evaluation as to whether the person  
28 is a sexually violent predator. The evaluation shall be conducted by a  
29 person deemed to be professionally qualified to conduct such an  
30 examination.

31 (e) *The person conducting the evaluation pursuant to this section*  
32 *shall notify the detained person of the following: (1) The nature and*  
33 *purpose of the evaluation; and (2) that the evaluation will not be*  
34 *confidential and that any statements made by the detained person, and any*  
35 *conclusions drawn by the evaluator, will be disclosed to the court, the*  
36 *detained person's attorney, the prosecutor and the trier of fact at any*

order

ordered by the court

ordered by the court

1 *proceeding conducted under K.S.A. 59-29a01 et seq., and amendments*  
2 *thereto.*

3 Sec. 2. K.S.A. 2011 Supp. 59-29a06 is hereby amended to read as  
4 follows: 59-29a06. (a) Within 60 days after the completion of any hearing  
5 held pursuant to K.S.A. 59-29a05, and amendments thereto, the court shall  
6 conduct a trial to determine whether the person is a sexually violent  
7 predator. The trial may be continued upon the request of either party and a  
8 showing of good cause, or by the court on its own motion in the due  
9 administration of justice, and when the respondent will not be substantially  
10 prejudiced.

11 (b) At all stages of the proceedings under K.S.A. 59-29a01 *et seq.*,  
12 and amendments thereto, any person subject to K.S.A. 59-29a01 *et seq.*, and  
13 amendments thereto, shall be entitled to the assistance of counsel, and  
14 if the person is indigent, the court shall appoint counsel to assist such  
15 person. Whenever any person is subjected to an examination under K.S.A.  
16 59-29a01 *et seq.*, and amendments thereto, such person may retain experts  
17 or professional persons to perform an examination of such person's behalf.  
18 When the person wishes to be examined by a qualified expert or  
19 professional person of such person's own choice, such examiner shall be  
20 permitted to have reasonable access to the person for the purpose of such  
21 examination, as well as to all relevant medical and psychological records  
22 and reports. In the case of a person who is indigent, the court, upon the  
23 person's request, shall determine whether the services are necessary and  
24 reasonable compensation for such services. If the court determines that the  
25 services are necessary and the expert or professional person's requested  
26 compensation for such services is reasonable, the court shall assist the  
27 person in obtaining an expert or professional person to perform an  
28 examination or participate in the trial on the person's behalf. The court  
29 shall approve payment for such services upon the filing of a certified claim  
30 for compensation supported by a written statement specifying the time  
31 expended, services rendered, expenses incurred on behalf of the person  
32 and compensation received in the same case or for the same services from  
33 any other source.

34 (c) Notwithstanding K.S.A. 60-456, and amendments thereto, at any  
35 ~~that~~ *proceeding* conducted under K.S.A. 59-29a01 *et seq.*, and  
36 amendments thereto, the parties shall be permitted to call expert witnesses.  
37 The facts or data in the particular case upon which an expert bases an  
38 opinion or inference may be those perceived by or made known to the  
39 expert at or before the hearing. If the facts or data are of a type reasonably  
40 relied upon by experts in the particular field in forming opinions or  
41 inferences upon the subject, such facts and data need not be admissible in  
42 evidence in order for the opinion or inference to be admitted.

43 (d) The person, the attorney general, or the judge shall have the right

1 to demand that the trial be before a jury. Such demand for the trial to be  
2 before a jury shall be filed, in writing, at least four days prior to trial.  
3 Number and selection of jurors shall be determined as provided in K.S.A.  
4 22-3403, and amendments thereto. If no demand is made, the trial shall be  
5 before the court.

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

11 (f) The provisions of this section are not jurisdictional, and failure to  
12 comply with such provisions in no way prevents the attorney general from  
13 proceeding against a person otherwise subject to the provision of K.S.A.  
14 59-29a01 *et seq.*, and amendments thereto.

15 Sec. 3. K.S.A. 59-29a05 and K.S.A. 2011 Supp. 59-29a06 are hereby  
16 repealed.

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