

HOUSE BILL No. 2707

By Committee on Corrections and Juvenile Justice

2-9

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to release of incompetent defendants.

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

5 Section 1. (a) If a defendant who has been involuntarily committed
6 is to be discharged pursuant to subsection (2) of K.S.A. 22-3305, and
7 amendments thereto, the head of the treatment facility shall send to the
8 court a written evaluation report. Upon receipt of the report, the court shall
9 set a hearing to determine whether or not the defendant is currently likely
10 to cause harm to self or others. The court shall hold a hearing within 30
11 days of receipt of such report.

12 (b) The court shall give notice of the hearing to the district or county
13 attorney, the defendant, the defendant's attorney, the head of the treatment
14 facility and the secretary of corrections for the purpose of providing victim
15 notification. The court shall inform the defendant that such defendant is
16 entitled to counsel and that counsel will be appointed to represent the
17 defendant if such defendant is not financially able to employ an attorney as
18 provided in K.S.A. 22-4503 et seq., and amendments thereto. The
19 defendant shall remain at the treatment facility pending the hearing.

20 (c) At the hearing, the defendant shall have the right to present
21 evidence and cross-examine witnesses. At the conclusion of the hearing, if
22 the court finds by clear and convincing evidence that the defendant is not
23 currently likely to cause harm to self or others, the court shall dismiss the
24 criminal proceeding and discharge the defendant, otherwise the court may
25 commit the defendant to a treatment facility for treatment or may place the
26 defendant on conditional release pursuant to subsection (4). The court shall
27 notify the secretary of corrections of the outcome of the hearing for the
28 purpose of providing victim notification.

29 (d) Prior to discharge of a defendant pursuant to subsection (2)(b), the
30 head of the treatment facility where the defendant is under commitment
31 shall give notice to the district court of the county from which the person
32 was committed that the defendant is ready for proposed conditional release
33 or discharge. Such notice shall include, but not be limited to: (a)
34 Identification of the defendant; (b) the course of treatment; (c) a current
35 assessment of the defendant's likelihood to cause harm to self or others; (d)
36 recommendations for future treatment, if any; and (e) recommendations

1 regarding conditional release or discharge, if any. Upon receiving notice,
2 the district court shall order that a hearing be held on the proposed
3 conditional release or discharge. The court shall give notice of the hearing
4 to the treatment facility where the defendant is under commitment, to the
5 district or county attorney of the county from which the defendant was
6 originally ordered committed and the secretary of corrections for the
7 purpose of providing victim notification. The court shall order the
8 involuntary defendant to undergo a mental evaluation by an evaluator
9 designated by the court. A copy of all orders of the court shall be sent to
10 the defendant and the defendant's attorney. The report of the court-ordered
11 mental evaluation shall be given to the district or county attorney, the
12 defendant and the defendant's attorney at least seven days prior to the
13 hearing. At the hearing, the court shall receive all relevant evidence,
14 including the written findings and recommendations of the head of the
15 treatment facility where the defendant is under commitment, and shall
16 determine whether the defendant shall be conditionally released or
17 discharged. The defendant shall have the right to present evidence at such
18 hearing and to cross-examine any witnesses called by the district or county
19 attorney. At the conclusion of the hearing, if the court finds by clear and
20 convincing evidence that the defendant is not likely to cause harm to self
21 or others, the court shall order the defendant discharged or conditionally
22 released; otherwise, the court shall order the defendant to remain in the
23 treatment facility where the defendant is under commitment. If the court
24 orders the conditional release of the defendant, the court may order as an
25 additional condition that the defendant continue to take prescribed
26 medication and report as directed to a person licensed to practice medicine
27 and surgery to determine if the defendant is taking the medication or that
28 the defendant continue to receive periodic psychiatric or psychological
29 treatment. The court shall notify the secretary of corrections of the
30 outcome of the hearing for the purpose of providing victim notification.

31 (e) In order to ensure the safety and welfare of a defendant who is to
32 be conditionally released and the citizenry of the state, the court may allow
33 the defendant to remain in custody at a facility under the supervision of the
34 secretary of social and rehabilitation services for a period of time not to
35 exceed 45 days in order to permit sufficient time for the secretary to
36 prepare recommendations to the court for a suitable reentry program for
37 the defendant and allow adequate time for the secretary of corrections to
38 provide victim notification. The reentry program shall be specifically
39 designed to facilitate the return of the defendant to the community as a
40 functioning, self-supporting citizen, and may include appropriate
41 supportive provisions for assistance in establishing residency, securing
42 gainful employment, undergoing needed vocational rehabilitation,
43 receiving marital and family counseling, and such other outpatient services

1 that appear beneficial. If a defendant who is to be conditionally released
2 will be residing in a county other than the county where the district court
3 that ordered the conditional release is located, the court shall transfer
4 venue of the case to the district court of the other county and send a copy
5 of all of the court's records of the proceedings to the other court. In all
6 cases of conditional release the court shall: (a) Order that the defendant be
7 placed under the temporary supervision of district court probation and
8 parole services, community treatment facility or any appropriate private
9 agency; and (b) require as a condition precedent to the release that the
10 defendant agree in writing to waive extradition in the event a warrant is
11 issued pursuant to K.S.A. 22-3428b, and amendments thereto.

12 (f) At any time during the conditional release period, a conditionally
13 released defendant, through the defendant's attorney, or the county or
14 district attorney of the county in which the district court having venue is
15 located may file a motion for modification of the conditions of release, and
16 the court shall hold an evidentiary hearing on the motion within 14 days of
17 its filing. The court shall give notice of the time for the hearing to the
18 defendant and the county or district attorney. If the court finds from the
19 evidence at the hearing that the conditional provisions of release should be
20 modified or vacated, it shall be so ordered. If at any time during the
21 transitional period the designated medical officer or supervisory personnel
22 or the treatment facility informs the court that the defendant is not
23 satisfactorily complying with the provisions of the conditional release, the
24 court, after a hearing for which notice has been given to the county or
25 district attorney and the defendant, may make orders: (a) For additional
26 conditions of release designed to effect the ends of the reentry program;
27 (b) requiring the county or district attorney to file a petition to determine
28 whether the defendant is a mentally ill person as provided in K.S.A. 59-
29 2957, and amendments thereto; or (c) requiring that the defendant be
30 committed to the state security hospital or any state hospital. In cases
31 where a petition is ordered to be filed, the court shall proceed to hear and
32 determine the petition pursuant to the care and treatment act for mentally
33 ill persons and that act shall apply to all subsequent proceedings. If a
34 defendant is committed to any state hospital pursuant to this act the
35 secretary of social and rehabilitation services shall notify the secretary of
36 corrections for the purpose of providing victim notification. The costs of
37 all proceedings, the mental evaluation and the reentry program authorized
38 by this section shall be paid by the county from which the defendant was
39 committed.

40 (g) As used in this section:

41 (1) "Likely to cause harm to self or others" means that the person is
42 likely, in the reasonably foreseeable future, to cause substantial physical
43 injury or physical abuse to self or others or substantial damage to another's

1 property, or evidenced by behavior causing, attempting or threatening such
2 injury, abuse or neglect.

3 (2) "Treatment facility" means any mental health center or clinic,
4 psychiatric unit of a medical care facility, psychologist, physician or other
5 institution or individual authorized or licensed by law to provide either
6 inpatient or outpatient treatment to any person.

7 Sec. 2. This act shall take effect and be in force from and after its
8 publication in the statute book.

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