

REPORTS OF STANDING COMMITTEES

MADAM PRESIDENT:

The Committee on **Judiciary** recommends **SB 248** be amended on page 1, following line 3, by inserting:

"WHEREAS, The provisions of K.S.A. 2013 Supp. 22-3727, and amendments thereto, shall be known and may be cited as Adrian Olajuwon Crosby and Dominique Nathaniel Tyree Green's Law: Now, therefore,";

Also on page 1, following line 5, by inserting:

"Section 1. K.S.A. 2013 Supp. 22-3303 is hereby amended to read as follows: 22-3303.
(1) A defendant who is charged with a felony and is found to be incompetent to stand trial shall be committed for evaluation and treatment to the state security hospital or any appropriate county or private institution. A defendant who is charged with a misdemeanor and is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state, county or private institution. At the time of such commitment the institution of commitment shall notify the ~~secretary of corrections~~ county or district attorney of the county in which the criminal proceedings are pending for the purpose of providing victim notification. Any such commitment shall be for a period of not to exceed 90 days. Within 90 days after the defendant's commitment to such institution, the chief medical officer of such institution shall certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate state, county or private institution until the defendant attains competency to stand trial or for a period of six months from the date of the original

commitment, whichever occurs first. If such probability does not exist, the court shall order the ~~secretary of social and rehabilitation~~ for aging and disability services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or subsection (b) of K.S.A. 2013 Supp. 21-5505, subsection (b) of 21-5506, subsection (b) of 21-5508, subsection (b) of 21-5604 or subsection (b) of 21-5812, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

(2) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the ~~secretary of social and rehabilitation~~ for aging and disability services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or subsection (b) of K.S.A. 2013 Supp. 21-5505, subsection (b) of 21-5506, subsection (b) of 21-5508, subsection (b) of 21-5604 or subsection (b) of 21-5812, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of

K.S.A. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.

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

(4) A defendant committed to a public institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all or any part of the time during which the defendant was committed and confined in such public institution.

Sec. 2. K.S.A. 2013 Supp. 22-3305 is hereby amended to read as follows: 22-3305. (1) Whenever involuntary commitment proceedings have been commenced by the ~~secretary of social and rehabilitation~~ for aging and disability services as required by K.S.A. 22-3303, and amendments thereto, and the defendant is not committed to a treatment facility as a patient, the defendant shall remain in the institution where committed pursuant to K.S.A. 22-3303, and amendments thereto. The ~~secretary of social and rehabilitation~~ for aging and disability services shall promptly notify the court, and the county or district attorney of the county in which the criminal proceedings are pending ~~and the secretary of corrections~~ for the purpose of providing victim notification, of the result of the involuntary commitment proceeding.

(2) Whenever involuntary commitment proceedings have been commenced by the ~~secretary of social and rehabilitation~~ for aging and disability services as required by K.S.A. 22-3303, and

amendments thereto, and the defendant is committed to a treatment facility as a patient but thereafter is to be discharged pursuant to the care and treatment act for mentally ill persons, the defendant shall remain in the institution where committed pursuant to K.S.A. 22-3303, and amendments thereto, and the head of the treatment facility shall promptly notify the court, and the county or district attorney of the county in which the criminal proceedings are pending ~~and the secretary of corrections~~ for the purpose of providing victim notification, that the defendant is to be discharged.

When giving notification to the court, and the county or district attorney ~~and the secretary of corrections~~ pursuant to subsection (1) or (2), the treatment facility shall include in such notification an opinion from the head of the treatment facility as to whether or not the defendant is now competent to stand trial. Upon request of the county or district attorney, the court may set a hearing on the issue of whether or not the defendant has been restored to competency. If such hearing request is granted, the ~~court shall notify the secretary of corrections of the hearing date for the purpose of victim notification~~ county or district attorney shall provide victim notification regarding the hearing date. If no such request is made within 14 days after receipt of notice pursuant to subsection (1) or (2), the court shall order the defendant to be discharged from commitment and shall dismiss without prejudice the charges against the defendant, and the period of limitation for the prosecution for the crime charged shall not continue to run until the defendant has been determined to have attained competency in accordance with K.S.A. 22-3302, and amendments thereto. ~~The court shall notify the secretary of corrections of the discharge order for the purpose of providing victim notification.~~ The county or district attorney shall provide victim notification regarding the discharge order.

Sec. 3. K.S.A. 2013 Supp. 22-3428 is hereby amended to read as follows: 22-3428. (1) (a) When a defendant is acquitted and the jury answers in the affirmative to the special question asked pursuant to K.S.A. 22-3221, and amendments thereto, the defendant shall be committed to the state security hospital for safekeeping and treatment and ~~the court shall notify the secretary of corrections for~~

~~the purpose of providing~~ county or district attorney shall provide victim notification. A finding of not guilty and the jury answering in the affirmative to the special question asked pursuant to K.S.A. 22-3221, and amendments thereto, shall be prima facie evidence that the acquitted defendant is presently likely to cause harm to self or others.

(b) Within 90 days of the defendant's admission, the chief medical officer of the state security hospital shall send to the court a written evaluation report. Upon receipt of the report, the court shall set a hearing to determine whether or not the defendant is currently a mentally ill person. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's report.

(c) The court shall give notice of the hearing to the chief medical officer of the state security hospital, the district or county attorney, the defendant, and the defendant's attorney ~~and the secretary of corrections for the purpose of providing~~. The county or district attorney shall provide victim notification. The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney as provided in K.S.A. 22-4503 et seq., and amendments thereto. The defendant shall remain at the state security hospital pending the hearing.

(d) At the hearing, the defendant shall have the right to present evidence and cross-examine witnesses. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the defendant is not currently a mentally ill person, the court shall dismiss the criminal proceeding and discharge the defendant, otherwise the court may commit the defendant to the state security hospital for treatment or may place the defendant on conditional release pursuant to subsection (4). ~~The court shall notify the secretary of corrections of the outcome of the hearing for the purpose of providing victim notification.~~ The county or district attorney shall provide victim notification regarding the outcome of the hearing.

(2) Subject to the provisions of subsection (3):

(a) Whenever it appears to the chief medical officer of the state security hospital that a person committed under subsection (1)(d) is not likely to cause harm to other persons in a less restrictive hospital environment, the officer may transfer the person to any state hospital, subject to the provisions of subsection (3). At any time subsequent thereto during which such person is still committed to a state hospital, if the chief medical officer of that hospital finds that the person may be likely to cause harm or has caused harm, to others, such officer may transfer the person back to the state security hospital.

(b) Any person committed under subsection (1)(d) may be granted conditional release or discharge as an involuntary patient.

(3) Before transfer of a person from the state security hospital pursuant to subsection (2)(a) or conditional release or discharge of a person pursuant to subsection (2)(b), the chief medical officer of the state security hospital or the state hospital where the patient is under commitment shall give notice to the district court of the county from which the person was committed that transfer of the patient is proposed or that the patient is ready for proposed conditional release or discharge. Such notice shall include, but not be limited to: (a) Identification of the patient; (b) the course of treatment; (c) a current assessment of the defendant's mental illness; (d) recommendations for future treatment, if any; and (e) recommendations regarding conditional release or discharge, if any. Upon receiving notice, the district court shall order that a hearing be held on the proposed transfer, conditional release or discharge. The court shall give notice of the hearing to the state hospital or state security hospital where the patient is under commitment, to the district or county attorney of the county from which the person was originally ordered committed ~~and the secretary of corrections for the purpose of providing victim notification.~~ The county or district attorney shall provide victim notification regarding the hearing. The court shall order the involuntary patient to undergo a mental evaluation by a person designated by the court. A copy of all orders of the court shall be sent to the involuntary patient and the patient's attorney. The report of the court ordered mental evaluation shall be given to the district or county attorney, the

involuntary patient and the patient's attorney at least seven days prior to the hearing. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice. The involuntary patient shall remain in the state hospital or state security hospital where the patient is under commitment until the hearing on the proposed transfer, conditional release or discharge is to be held. At the hearing, the court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or the state hospital where the patient is under commitment, and shall determine whether the patient shall be transferred to a less restrictive hospital environment or whether the patient shall be conditionally released or discharged. The patient shall have the right to present evidence at such hearing and to cross-examine any witnesses called by the district or county attorney. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the patient will not be likely to cause harm to self or others if transferred to a less restrictive hospital environment, the court shall order the patient transferred. If the court finds by clear and convincing evidence that the patient is not currently a mentally ill person, the court shall order the patient discharged or conditionally released; otherwise, the court shall order the patient to remain in the state security hospital or state hospital where the patient is under commitment. If the court orders the conditional release of the patient in accordance with subsection (4), the court may order as an additional condition to the release that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery to determine whether or not the patient is taking the medication or that the patient continue to receive periodic psychiatric or psychological treatment. ~~The court shall notify the secretary of corrections of the outcome of the hearing for the purpose of providing victim notification.~~ The county or district attorney shall notify any victims of the outcome of the hearing.

(4) In order to ensure the safety and welfare of a patient who is to be conditionally released and the citizenry of the state, the court may allow the patient to remain in custody at a facility under the

supervision of the ~~secretary of social and rehabilitation~~ secretary of aging and disability services for a period of time not to exceed 45 days in order to permit sufficient time for the secretary to prepare recommendations to the court for a suitable reentry program for the patient and allow adequate time for the ~~secretary of corrections~~ county or district attorney to provide victim notification. The reentry program shall be specifically designed to facilitate the return of the patient to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other outpatient services that appear beneficial. If a patient who is to be conditionally released will be residing in a county other than the county where the district court that ordered the conditional release is located, the court shall transfer venue of the case to the district court of the other county and send a copy of all of the court's records of the proceedings to the other court. In all cases of conditional release the court shall: (a) Order that the patient be placed under the temporary supervision of district court probation and parole services, community treatment facility or any appropriate private agency; and (b) require as a condition precedent to the release that the patient agree in writing to waive extradition in the event a warrant is issued pursuant to K.S.A. 22-3428b, and amendments thereto.

(5) At any time during the conditional release period, a conditionally released patient, through the patient's attorney, or the county or district attorney of the county in which the district court having venue is located may file a motion for modification of the conditions of release, and the court shall hold an evidentiary hearing on the motion within 14 days of its filing. The court shall give notice of the time for the hearing to the patient and the county or district attorney. If the court finds from the evidence at the hearing that the conditional provisions of release should be modified or vacated, it shall so order. If at any time during the transitional period the designated medical officer or supervisory personnel or the treatment facility informs the court that the patient is not satisfactorily complying with the provisions

of the conditional release, the court, after a hearing for which notice has been given to the county or district attorney and the patient, may make orders: (a) For additional conditions of release designed to effect the ends of the reentry program; (b) requiring the county or district attorney to file a petition to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2957, and amendments thereto; or (c) requiring that the patient be committed to the state security hospital or any state hospital. In cases where a petition is ordered to be filed, the court shall proceed to hear and determine the petition pursuant to the care and treatment act for mentally ill persons and that act shall apply to all subsequent proceedings. If a patient is committed to any state hospital pursuant to this act ~~the secretary of social and rehabilitation services shall notify the secretary of corrections for the purpose of providing~~ county or district attorney shall provide victim notification. The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the person was committed.

(6) In any case in which the defense that the defendant lacked the required mental state pursuant to K.S.A. 22-3220, and amendments thereto, is relied on, the court shall instruct the jury on the substance of this section.

(7) As used in this section and K.S.A. 22-3428a, and amendments thereto:

(a) "Likely to cause harm to self or others" means that the person is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, or evidenced by behavior causing, attempting or threatening such injury, abuse or neglect.

(b) "Mentally ill person" means any person who:

(A) Is suffering from a severe mental disorder to the extent that such person is in need of treatment; and

(B) is likely to cause harm to self or others.

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

Sec. 4. K.S.A. 2013 Supp. 22-3428a is hereby amended to read as follows: 22-3428a. (1) Any person found not guilty, pursuant to K.S.A. 22-3220 and 22-3221, and amendments thereto, who remains in the state security hospital or a state hospital for over one year pursuant to a commitment under K.S.A. 22-3428, and amendments thereto, shall be entitled annually to request a hearing to determine whether or not the person continues to be a mentally ill person. The request shall be made in writing to the district court of the county where the person is hospitalized and shall be signed by the committed person or the person's counsel. When the request is filed, the court shall give notice of the request to: (a) The county or district attorney of the county in which the person was originally ordered committed; and (b) the chief medical officer of the state security hospital or state hospital where the person is committed. The chief medical officer receiving the notice, or the officer's designee, shall conduct a mental examination of the person and shall send to the district court of the county where the person is hospitalized and to the county or district attorney of the county in which the person was originally ordered committed a report of the examination within 21 days from the date when notice from the court was received. Within 14 days after receiving the report of the examination, the county or district attorney receiving it may file a motion with the district court that gave the notice, requesting the court to change the venue of the hearing to the district court of the county in which the person was originally committed, or the court that gave the notice on its own motion may change the venue of the hearing to the district court of the county in which the person was originally committed. Upon receipt of that motion and the report of the mental examination or upon the court's own motion, the court shall transfer the hearing to the district court specified in the motion and send a copy of the court's records of the proceedings to that court.

(2) After the time in which a change of venue may be requested has elapsed, the court having venue shall set a date for the hearing, giving notice thereof to the county or district attorney of the county, the committed person, and the person's counsel ~~and the secretary of corrections for the purpose of providing victim notification.~~ The county or district attorney shall provide victim notification. If there is no counsel of record, the court shall appoint a counsel for the committed person. The committed person shall have the right to procure, at the person's own expense, a mental examination by a physician or licensed psychologist of the person's own choosing. If a committed person is financially unable to procure such an examination, the aid to indigent defendants provisions of article 45 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, shall be applicable to that person. A committed person requesting a mental examination pursuant to K.S.A. 22-4508, and amendments thereto, may request a physician or licensed psychologist of the person's own choosing and the court shall request the physician or licensed psychologist to provide an estimate of the cost of the examination. If the physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants, the judge shall appoint the requested physician or licensed psychologist; otherwise, the court shall designate a physician or licensed psychologist to conduct the examination. Copies of each mental examination of the committed person shall be filed with the court at least seven days prior to the hearing and shall be supplied to the county or district attorney receiving notice pursuant to this section and the committed person's counsel.

(3) At the hearing the committed person shall have the right to present evidence and cross-examine the witnesses. The court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or state hospital where the person is under commitment, and shall determine whether the committed person continues to be a mentally ill person. At the hearing the court may make any order that a court is empowered to make

pursuant to subsections (3), (4) and (5) of K.S.A. 22-3428, and amendments thereto. If the court finds by clear and convincing evidence the committed person is not a mentally ill person, the court shall order the person discharged; otherwise, the person shall remain committed or be conditionally released. ~~The court shall notify the secretary of corrections of the outcome of the hearing for the purpose of providing victim notification.~~ The county or district attorney shall provide victim notification regarding the outcome of the hearing.

(4) Costs of a hearing held pursuant to this section shall be assessed against and paid by the county in which the person was originally ordered committed.

Sec. 5. K.S.A. 2013 Supp. 22-3430 is hereby amended to read as follows: 22-3430. (a) If the report of the examination authorized by K.S.A. 22-3429, and amendments thereto, shows that the defendant is in need of psychiatric care and treatment, that such treatment may materially aid in the defendant's rehabilitation and that the defendant and society are not likely to be endangered by permitting the defendant to receive such psychiatric care and treatment, in lieu of confinement or imprisonment, the trial judge shall have power to commit such defendant to: (1) The state security hospital or any county institution provided for the reception, care, treatment and maintenance of mentally ill persons, if the defendant is convicted of a felony; or (2) any state or county institution provided for the reception, care, treatment and maintenance of mentally ill persons, if the defendant is convicted of a misdemeanor. The court may direct that the defendant be detained in such hospital or institution until further order of the court or until the defendant is discharged under K.S.A. 22-3431, and amendments thereto. ~~The court shall notify the secretary of corrections of the outcome of the hearing for the purpose of providing victim notification.~~ The county or district attorney shall notify any victims of the outcome of the hearing. No period of detention under this section shall exceed the maximum term provided by law for the crime of which the defendant has been convicted. The cost of care and treatment provided by a state institution shall be assessed in accordance with K.S.A. 59-2006,

and amendments thereto.

(b) No defendant committed to the state security hospital pursuant to this section upon conviction of a felony shall be transferred or released from such hospital except on recommendation of the staff of such hospital.

(c) The defendant may appeal from any order of commitment made pursuant to this section in the same manner and with like effect as if sentence to a jail, or to the custody of the secretary of corrections had been imposed.

Sec. 6. K.S.A. 2013 Supp. 22-3431 is hereby amended to read as follows: 22-3431. (a) Whenever it appears to the chief medical officer of the institution to which a defendant has been committed under K.S.A. 22-3430, and amendments thereto, that the defendant will not be improved by further detention in such institution, the chief medical officer shall give written notice thereof to the district court where the defendant was convicted. Such notice shall include, but not be limited to: (1) Identification of the patient; (2) the course of treatment; (3) a current assessment of the defendant's psychiatric condition; (4) recommendations for future treatment, if any; and (5) recommendations regarding discharge, if any.

(b) Upon receiving such notice, the district court shall order that a hearing be held. The court shall give notice of the hearing to: (1) The state hospital or state security hospital where the defendant is under commitment; (2) the district or county attorney of the county from which the defendant was originally committed; (3) the defendant; and (4) the defendant's attorney; ~~and (5) the secretary of corrections for the purpose of providing.~~ The county or district attorney shall provide victim notification. The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney as provided in K.S.A. 22-4503 et seq., and amendments thereto. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice.

(c) At the hearing, the defendant shall be sentenced, committed, granted probation, assigned to a community correctional services program, as provided by K.S.A. 75-5291, and amendments thereto, or discharged as the court deems best under the circumstance. ~~The court shall notify the secretary of corrections of the outcome of the hearing for the purpose of providing victim notification.~~ The county or district attorney shall notify any victims of the outcome of the hearing. The time spent in a state or local institution pursuant to a commitment under K.S.A. 22-3430, and amendments thereto, shall be credited against any sentence, confinement or imprisonment imposed on the defendant.";

Also on page 1, in line 21, by striking "Whenever feasible, such notice" and inserting "Except for notifications of releases due to a court order, escape or death, notification"; also on page 1, following line 27, by inserting "Sec. 8. K.S.A. 2013 Supp. 22-3727a is hereby amended to read as follows: 22-3727a. (a) The ~~secretary of corrections~~ county or district attorney shall, as soon as practicable, provide notification as provided in K.S.A. 22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, and 22-3431 ~~and 22-3727~~, and amendments thereto, and upon the escape or death of a committed defendant ~~or inmate~~ while in the custody of the ~~secretary of social and rehabilitation for aging and disability~~ services, to any victim of the ~~defendant or inmate's~~ defendant's crime whose address is known to the ~~secretary of corrections~~ county or district attorney, and the victim's family, if so requested and the family's addresses are known to the ~~secretary of corrections~~ county or district attorney. Such notice shall be required to be given only if the defendant was charged with, ~~or the inmate was convicted of,~~ any crime in article 33, 34, 35 or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 53, 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2013 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto.

(b) As used in this section, "victim's family" means a spouse, surviving spouse, children, parents, legal guardian, siblings, stepparent or grandparents.";

Also in page 1, in line 28, after "Supp." by inserting "22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-3431, "; also in line 28, by striking "is" and inserting "and 22-3727a are";

And by renumbering sections accordingly;

On page 1, in the title, in line 3, after "Supp." by inserting "22-3303, 22-3305, 22-3428, 22-3428a, 22-3430, 22-3431, "; also in line 3, after "22-3727" by inserting "and 22-3727a"; also in line 3, by striking "section" and inserting "sections"; and the bill be passed as amended.

Chairperson