

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2734

By Committee on Judiciary

2-9

1 AN ACT concerning ~~the probate code; relating to~~ the Kansas sexually
2 violent predator act; persons in the custody of the secretary for aging
3 and disability services; administrative confinement; amending K.S.A.
4 2017 Supp. 59-29a02, 59-29a07, 59-29a08, 59-29a11; **and** 59-29a19
5 ~~and 59-29a22~~ and repealing the existing sections.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2017 Supp. 59-29a02 is hereby amended to read as
9 follows: 59-29a02. As used in this act:

10 (a) "Sexually violent predator" means any person who has been
11 convicted of or charged with a sexually violent offense and who suffers
12 from a mental abnormality or personality disorder which makes the person
13 likely to engage in repeat acts of sexual violence *and who has serious*
14 *difficulty in controlling such person's dangerous behavior.*

15 (b) "Mental abnormality" means a congenital or acquired condition
16 affecting the emotional or volitional capacity which predisposes the person
17 to commit sexually violent offenses in a degree constituting such person a
18 menace to the health and safety of others.

19 (c) "Likely to engage in repeat acts of sexual violence" means the
20 person's propensity to commit acts of sexual violence is of such a degree
21 as to pose a menace to the health and safety of others.

22 (d) "Sexually motivated" means that one of the purposes for which
23 the defendant committed the crime was for the purpose of the defendant's
24 sexual gratification.

25 (e) "Sexually violent offense" means:

26 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
27 2017 Supp. 21-5503, and amendments thereto;

28 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior
29 to its repeal, or ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-5506(a), and
30 amendments thereto;

31 (3) aggravated indecent liberties with a child, as defined in K.S.A.
32 21-3504, prior to its repeal, or ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-
33 5506(b), and amendments thereto;

34 (4) criminal sodomy, as defined in ~~subsection (a)(2) and (a)(3) of~~
35 K.S.A. 21-3505(a)(2) *and (a)(3)*, prior to its repeal, or ~~subsection (a)(3)~~
36 ~~and (a)(4) of~~ K.S.A. 2017 Supp. 21-5504(a)(3) *and (a)(4)*, and

1 amendments thereto;

2 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
3 to its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5504(b), and
4 amendments thereto;

5 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510,
6 prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2017 Supp. 21-5508(a), and
7 amendments thereto;

8 (7) aggravated indecent solicitation of a child, as defined in K.S.A.
9 21-3511, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-
10 5508(b), and amendments thereto;

11 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
12 to its repeal, or K.S.A. 2017 Supp. 21-5510, and amendments thereto;

13 (9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
14 its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5505(b), and
15 amendments thereto;

16 (10) aggravated incest, as defined in K.S.A. 21-3603, prior to its
17 repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5604(b), and
18 amendments thereto;

19 (11) any conviction for a felony offense in effect at any time prior to
20 the effective date of this act, that is comparable to a sexually violent
21 offense as defined in ~~subparagraphs~~ *paragraphs* (1) through (11) or any
22 federal or other state conviction for a felony offense that under the laws of
23 this state would be a sexually violent offense as defined in this section;

24 (12) an attempt, conspiracy or criminal solicitation, as defined in
25 K.S.A. 21-3301, 21-3302 and 21-3303, prior to their repeal, or K.S.A.
26 2017 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a
27 sexually violent offense as defined in this subsection; or

28 (13) any act which either at the time of sentencing for the offense or
29 subsequently during civil commitment proceedings pursuant to this act,
30 has been determined beyond a reasonable doubt to have been sexually
31 motivated.

32 (f) "Agency with jurisdiction" means that agency which releases upon
33 lawful order or authority a person serving a sentence or term of
34 confinement and includes the department of corrections, the Kansas
35 department for aging and disability services and the prisoner review board.

36 (g) "Person" means an individual who is a potential or actual subject
37 of proceedings under this act.

38 (h) "Treatment staff" means the persons, agencies or firms employed
39 by or contracted with the secretary to provide treatment, supervision or
40 other services at the sexually violent predator facility.

41 (i) "Transitional release" means any halfway house, work release,
42 sexually violent predator treatment facility or other placement designed to
43 assist the person's adjustment and reintegration into the community—~~onee~~

1 ~~released from commitment.~~

2 (j) "Secretary" means the secretary for aging and disability services.

3 (k) *"Conditional release" means approved placement in the*
4 *community for a minimum of five years while under the supervision of the*
5 *person's court of original commitment and **monitored by the secretary for***
6 *aging and disability services.*

7 (l) *"Professional **Conditional release monitor**" means an individual*
8 *named in the ~~conditional release treatment plan by the treatment staff~~*
9 ***appointed by the court to monitor the person's compliance with the***
10 *treatment plan while placed on conditional release and who reports to the*
11 *court. **Such monitor shall not be a court services officer.***

12 (m) *"Progress review panel" means individuals appointed by the*
13 *secretary for aging and disability services to evaluate a person's progress*
14 *in the sexually violent predator treatment program.*

15 Sec. 2. K.S.A. 2017 Supp. 59-29a07 is hereby amended to read as
16 follows: 59-29a07. (a) The court or jury shall determine whether, beyond a
17 reasonable doubt, the person is a sexually violent predator. If such
18 determination that the person is a sexually violent predator is made by a
19 jury, such determination shall be by unanimous verdict of such jury. Such
20 determination may be appealed in the manner provided for civil cases in
21 article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments
22 thereto. If the court or jury determines that the person is a sexually violent
23 predator, the person shall be committed to the custody of the secretary for
24 aging and disability services for control, care and treatment until such time
25 as the person's mental abnormality or personality disorder has so changed
26 that the person is safe to be at large. Such control, care and treatment shall
27 be provided at a facility operated by the Kansas department for aging and
28 disability services.

29 (b) At all times, persons committed for control, care and treatment by
30 the Kansas department for aging and disability services pursuant to the
31 Kansas sexually violent predator act shall be kept in a secure facility and
32 such persons shall be segregated on different units from any other patient
33 under the supervision of the secretary for aging and disability services and
34 commencing June 1, 1995, such persons committed pursuant to the Kansas
35 sexually violent predator act shall be kept in a facility or building separate
36 from any other patient under the supervision of the secretary. The
37 ~~provisions of this subsection~~ *secure confinement restriction shall not apply*
38 *to any ~~reintegration, transitional release or conditional release~~ facility or*
39 *building ~~utilized in any transitional release program or conditional release~~*
40 *program.*

41 (c) The Kansas department for aging and disability services is
42 authorized to enter into an interagency agreement with the department of
43 corrections for the confinement of such persons. Such persons who are in

1 the confinement of the secretary of corrections pursuant to an interagency
2 agreement shall be housed and managed separately from offenders in the
3 custody of the secretary of corrections, and except for occasional instances
4 of supervised incidental contact, shall be segregated from such offenders.

5 (d) If any person while committed to the custody of the secretary
6 pursuant to the Kansas sexually violent predator act shall be taken into
7 custody by any law enforcement officer as defined in K.S.A. 2017 Supp.
8 21-5111, and amendments thereto, pursuant to any parole revocation
9 proceeding or any arrest or conviction for a criminal offense of any nature,
10 upon the person's release from the custody of any law enforcement officer,
11 the person shall be returned to the custody of the secretary for further
12 treatment pursuant to the Kansas sexually violent predator act. During any
13 such period of time a person is not in the actual custody or supervision of
14 the secretary, the secretary shall be excused from the provisions of K.S.A.
15 59-29a08, and amendments thereto, with regard to providing that person
16 an annual examination, annual notice and annual report to the court, except
17 that the secretary shall give notice to the court as soon as reasonably
18 possible after the taking of the person into custody that the person is no
19 longer in treatment pursuant to the Kansas sexually violent predator act
20 and notice to the court when the person is returned to the custody of the
21 secretary for further treatment.

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

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

30 (g) If the person charged with a sexually violent offense has been
31 found incompetent to stand trial and is about to be released pursuant to
32 K.S.A. 22-3305 and amendments thereto and such person's commitment is
33 sought pursuant to subsection (a), the court shall first hear evidence and
34 determine whether the person did commit the act or acts charged. The
35 hearing on this issue must comply with all the procedures specified in this
36 section. In addition, the rules of evidence applicable in criminal cases shall
37 apply and all constitutional rights available to defendants at criminal trials,
38 other than the right not to be tried while incompetent, shall apply. After
39 hearing evidence on this issue, the court shall make specific findings on
40 whether the person did commit the act or acts charged, the extent to which
41 the person's incompetence or developmental disability affected the
42 outcome of the hearing, including its effect on the person's ability to
43 consult with and assist counsel and to testify on such person's own behalf,

1 the extent to which the evidence could be reconstructed without the
2 assistance of the person and the strength of the prosecution's case. If after
3 the conclusion of the hearing on this issue, the court finds, beyond a
4 reasonable doubt, that the person did commit the act or acts charged, the
5 court shall enter a final order, appealable by the person, on that issue and
6 may proceed to consider whether the person should be committed pursuant
7 to this section.

8 Sec. 3. K.S.A. 2017 Supp. 59-29a08 is hereby amended to read as
9 follows: 59-29a08. (a) Each person committed under the Kansas sexually
10 violent predator act shall have a current examination of the person's mental
11 condition made once every year. The secretary shall provide the person
12 with an annual written notice of the person's right to petition the court for
13 release over the secretary's objection. The notice shall contain a waiver of
14 rights. The secretary shall also forward the annual report, as well as the
15 annual notice and waiver form, to the court that committed the person
16 under the Kansas sexually violent predator act. The court shall file the
17 notice and the report upon receipt **and forward the file-stamped copy to**
18 **the attorney general.** ~~The court~~ *attorney general shall forward a file-*
19 *stamped copy of the annual written notice and annual report to the*
20 *secretary upon filing receipt.*

21 (b) The person must file a request for an annual review hearing
22 within 45 days after the date the court files the annual written notice.
23 Failure to request a hearing within 45 days pursuant to this subsection
24 waives the person's right to a hearing until the next annual report is filed
25 by the court. A contested annual review hearing for transitional release
26 shall consist of consideration about whether the person is entitled to
27 transitional release. Only a person in transitional release shall be permitted
28 to petition for conditional release. Only a person in conditional release
29 shall be permitted to petition for final discharge **after a minimum of five**
30 **years has passed in which the person has been free of violations of**
31 **conditions of such person's treatment plan, as provided in K.S.A. 59-**
32 **29a19(e), and amendments thereto.**

33 (c) The person may retain, or if the person is indigent and so requests
34 the court may appoint, an examiner pursuant to K.S.A. 60-235, and
35 amendments thereto, and the examiner shall have access to all available
36 records concerning the person. If the person is indigent and makes a
37 request for an examiner, the court shall determine whether the services are
38 necessary and shall determine the reasonable compensation for such
39 services. The court, before appointing an examiner, shall consider factors
40 including the person's compliance with institutional requirements and the
41 person's participation in treatment to determine whether the person's
42 progress justifies the costs of an examination. The appointment of an
43 examiner is discretionary.

1 (d) At the annual review hearing, the burden of proof shall be upon
2 the person to show probable cause to believe the person's mental
3 abnormality or personality disorder has significantly changed so that the
4 person is safe to be placed in transitional release. The report, or a copy
5 thereof, of the findings of a qualified expert shall be admissible into
6 evidence in the annual review hearing in the same manner and with the
7 same force and effect as if the qualified expert had testified in person. If
8 the person does not participate in the prescribed treatment plan, the person
9 is presumed to be unable to show probable cause to believe the person is
10 safe to be released.

11 (e) The person shall have a right to have an attorney represent the
12 person at the annual review hearing to determine probable cause, but the
13 person is not entitled to be present at the hearing.

14 (f) If the person does not file a petition requesting a hearing pursuant
15 to subsection (b), the court that committed the person under the Kansas
16 sexually violent predator act shall then conduct an in camera annual
17 review of the status of the person's mental condition and determine
18 whether the person's mental abnormality or personality disorder has
19 significantly changed so that an annual review hearing is warranted. The
20 court shall enter an order reflecting its determination.

21 (g) If the court at the annual review hearing determines that probable
22 cause exists to believe that the person's mental abnormality or personality
23 disorder has significantly changed so that the person is safe to be placed in
24 transitional release, then the court shall set a hearing for transitional
25 release on the issue. The person shall be entitled to be present and entitled
26 to the assistance of counsel. The attorney general shall represent the state
27 and shall have a right to have the person evaluated by experts chosen by
28 the state. The person shall also have the right to have experts evaluate the
29 person on the person's behalf and the court shall appoint an expert if the
30 person is indigent and requests an appointment. The burden of proof at the
31 hearing for transitional release shall be upon the state to prove beyond a
32 reasonable doubt that the person's mental abnormality or personality
33 disorder remains such that the person is not safe to be placed in transitional
34 release and if transitionally released is likely to engage in repeat acts of
35 sexual violence.

36 (h) If, after the hearing for transitional release, the court is convinced
37 beyond a reasonable doubt that the person is not appropriate for
38 transitional release, the court shall order that the person remain in secure
39 commitment. Otherwise, the court shall order that the person be placed in
40 transitional release.

41 (i) If the court determines that the person should be placed in
42 transitional release, the secretary shall transfer the person to the
43 transitional release program. The secretary may contract for services to be

1 provided in the transitional release program. During any period the person
2 is in transitional release, that person shall comply with any rules or
3 regulations the secretary may establish for this program and every
4 directive of the treatment staff of the transitional release program.

5 (j) At any time during which the person is in the transitional release
6 program and the treatment staff determines that the person has violated
7 any rule, regulation or directive associated with the transitional release
8 program, the treatment staff may remove the person from the transitional
9 release program and return the person to the secure commitment facility, or
10 may request the district court to issue an emergency ex parte order
11 directing any law enforcement officer to take the person into custody and
12 return the person to the secure commitment facility. Any such request may
13 be made verbally or by telephone, but shall be followed in written,
14 facsimile or electronic form delivered to the court by not later than 5:00
15 p.m. of the first day the district court is open for the transaction of business
16 after the verbal or telephonic request was made.

17 (k) Upon the person being returned to the secure commitment facility
18 from the transitional release program, notice thereof shall be given by the
19 secretary to the court. The court shall set the matter for a hearing within
20 two working days of receipt of notice of the person's having been returned
21 to the secure commitment facility and cause notice thereof to be given to
22 the attorney general, the person and the secretary. The attorney general
23 shall have the burden of proof to show probable cause that the person
24 violated conditions of transitional release. The hearing shall be to the
25 court. At the conclusion of the hearing the court shall issue an order
26 returning the person to the secure commitment facility or to the transitional
27 release program, and may order such other further conditions with which
28 the person must comply if the person is returned to the transitional release
29 program.

30 (l) For the purposes of this section, if the person is indigent and
31 without counsel, the court shall appoint counsel to assist such person.

32 Sec. 4. K.S.A. 2017 Supp. 59-29a11 is hereby amended to read as
33 follows: 59-29a11. (a) If a person has previously filed a petition for
34 transitional release, conditional release or final discharge without the
35 secretary for aging and disability services approval and the court
36 determined either upon review of the petition or following a hearing, that
37 the person's petition was frivolous or that the person's condition had not
38 significantly changed so that it is safe for the person to be at large, then the
39 court shall deny the subsequent petition, unless the petition contains facts
40 upon which a court could find the condition of the petitioner had
41 significantly changed so that a hearing was warranted. Upon receipt of a
42 first or subsequent petition from committed persons without the secretary's
43 approval, the court shall endeavor whenever possible to review the petition

1 and determine if the petition is based upon frivolous grounds and if so
2 shall deny the petition without a hearing.

3 (b) No transitional release or conditional release facility or building
4 shall be located within 2,000 feet of a licensed child care facility, an
5 established place of worship, any residence in which a child under 18
6 years of age resides, or the real property of any school upon which is
7 located a structure used by a unified school district or an accredited
8 nonpublic school for student instruction or attendance or extracurricular
9 activities of pupils enrolled in kindergarten or any grades one through 12.
10 This subsection shall not apply to any state institution or facility.

11 (c) Transitional release or conditional release facilities or buildings
12 shall be subject to all regulations applicable to other property and
13 buildings located in the zone or area that are imposed by any municipality
14 through zoning ordinance, resolution or regulation, such municipality's
15 building regulatory codes, subdivision regulations or other
16 nondiscriminatory regulations.

17 (d) On and after July 1, 2015, the secretary for aging and disability
18 services shall place no more than 16 sexually violent predators in any one
19 county on transitional release ~~or conditional release~~.

20 (e) The secretary for aging and disability services shall submit an
21 annual report to the governor and the legislature during the first week of
22 the regular legislative session detailing activities related to the transitional
23 release and conditional release of sexually violent predators. The report
24 shall include the status of such predators who have been placed in
25 transitional release or conditional release including the number of any such
26 predators and their locations; information regarding the number of
27 predators who have been returned to the sexually violent predator
28 treatment program at Larned state hospital along with the reasons for such
29 return; and any plans for the development of additional transitional release
30 or conditional release facilities.

31 Sec. 5. K.S.A. 2017 Supp. 59-29a19 is hereby amended to read as
32 follows: 59-29a19. (a) ~~In making the determination that a person should~~
33 ~~be placed on conditional release, the court shall give deference to the~~
34 ~~recommendation of the treatment staff and progress review panel.~~ If the
35 court determines that the person should be placed on conditional release,
36 the court, based upon the recommendation of the treatment staff *and*
37 *progress review panel*, shall establish a plan of treatment which the person
38 shall be ordered to follow. This plan of treatment may include, but shall
39 not be limited to: Provisions as to where the person shall reside and with
40 whom, taking prescribed medications, attending individual and group
41 counseling *and any other type of treatment*, maintaining employment,
42 having no contact with children, ~~not frequenting facilities, locations,~~
43 ~~events or otherwise in which children are likely to be present and not~~

1 ~~engaging in activities in which contact with children is likely having no~~
2 ~~direct contact with individuals that match the person's victim template,~~
3 ~~travel restrictions, searches, home visits, substance abuse testing and~~
4 ~~registration requirements.~~ Upon a showing by the person that the person
5 accepts the plan of treatment and is prepared to follow it, the court shall
6 release the person from the transitional release program.

7 ~~(b) After a minimum of five years have passed in which the person~~
8 ~~has been free of violations of conditions of such person's treatment plan,~~
9 ~~the treatment staff, or other professionals directed by the court may~~
10 ~~examine such person to determine if the person's mental abnormality or~~
11 ~~personality disorder has changed so as to warrant such person being~~
12 ~~considered for final discharge. The person preparing the report shall~~
13 ~~forward the report to the court. The court shall review the same. If the~~
14 ~~court determines that probable cause exists to believe that the person's~~
15 ~~mental abnormality or personality disorder has so changed that the person~~
16 ~~is safe to be entitled to final discharge, the court shall set a formal hearing~~
17 ~~on the issue. The attorney general shall have the burden of proof to show~~
18 ~~beyond a reasonable doubt that the person's mental abnormality or~~
19 ~~personality disorder remains such that such person is not appropriate for~~
20 ~~final discharge. The person shall have the same rights as enumerated in~~
21 ~~K.S.A. 59-29a06, and amendments thereto. Subsequent to either a court~~
22 ~~review or a hearing, the court shall issue an appropriate order with findings~~
23 ~~of fact. The order of the court shall be provided to the attorney general, the~~
24 ~~person and the secretary.~~

25 ~~(c) If, after a hearing, the court is convinced beyond a reasonable~~
26 ~~doubt that the person is not appropriate for final discharge, the court shall~~
27 ~~continue custody of the person with the secretary for placement in a secure~~
28 ~~facility, transitional release program or conditional release program.~~
29 ~~Otherwise, the court shall order the person finally discharged. In the event~~
30 ~~the court does not order final discharge of the person, the person still~~
31 ~~retains the right to annual reviews.~~

32 ~~(d) At any time during which the person is on conditional release and~~
33 ~~the professional person designated by the court in the treatment plan to~~
34 ~~monitor the person's compliance with it determines that the person has~~
35 ~~violated any material condition of that plan, that professional person may~~
36 ~~request the district court to issue an emergency ex parte order directing any~~
37 ~~law enforcement officers to take the person into custody and return the~~
38 ~~person to the secure commitment facility. Any such request may be made~~
39 ~~verbally or by telephone, but shall be followed in written, facsimile or~~
40 ~~electronic copy form delivered to the court not later than 5:00 p.m. of the~~
41 ~~first day the district court is open for the transaction of business after the~~
42 ~~verbal or telephonic request was made.~~

43 ~~(e) Upon the person being returned to the secure commitment facility~~

1 from conditional release, notice thereof shall be given by the secretary to
2 the court. The court shall set the matter for a hearing within two working
3 days of receipt of notice of the person's having been returned to the secure
4 commitment facility and cause notice thereof to be given to the attorney
5 general, the person and the secretary. The attorney general shall have the
6 burden of proof to show probable cause that the person violated conditions
7 of conditional release. The hearing shall be to the court. At the conclusion
8 of the hearing the court shall issue an order returning the person to the
9 secure commitment facility, to the transitional release program or to
10 conditional release, and may order such other further conditions with
11 which the person must comply if the person is returned to either the
12 transitional release program or to conditional release.

13 (b) ~~The professional conditional release monitor shall monitor the~~
14 ~~person's compliance with the plan of treatment ordered by the court while~~
15 ~~on conditional release. The professional conditional release monitor shall~~
16 ~~report the person's progress on conditional release to the court. At any~~
17 ~~time during which the person is on conditional release and the~~
18 ~~professional conditional release monitor determines that the person has~~
19 ~~violated any material condition of the plan, the professional conditional~~
20 ~~release monitor may request the district court to issue an emergency ex~~
21 ~~parte order directing any law enforcement officer to take the person into~~
22 ~~custody and return the person to the secure commitment facility. Any such~~
23 ~~request may shall be made verbally in person or by telephone, but shall be~~
24 ~~followed in written, facsimile or electronic copy form delivered to the~~
25 ~~court not later than 5:00 p.m. of the first day the district court is open for~~
26 ~~the transaction of business after the verbal or telephonic request was~~
27 ~~made by sworn affidavit setting forth with specificity the grounds for~~
28 ~~the entry of such emergency ex parte order provided to the court by~~
29 ~~personal delivery, telefacsimile communication or electronic means~~
30 ~~prior to the entry of such order and notice of such request shall be~~
31 ~~given to the person's counsel, or if the person is unrepresented, to the~~
32 ~~person.~~

33 (c) *A current examination of the person's mental condition shall be*
34 *made in accordance with K.S.A. 59-29a08, and amendments thereto, and*
35 *submitted to the court and the secretary once each year.*

36 (d) *Upon the person being returned to the secure commitment facility*
37 *from conditional release, notice shall be given by the secretary to the*
38 *court. The court shall set the matter for a hearing within two working days*
39 *of receipt of notice of the person's having been returned to the secure*
40 *commitment facility and cause notice to be given to the attorney general,*
41 *the person and the secretary. The attorney general shall have the burden*
42 *of proof to show probable cause that the person violated conditions of*
43 *conditional release. The hearing shall be to the court. At the conclusion of*

1 *the hearing, the court shall issue an order returning the person to the*
2 *secure commitment facility, to transitional release, or to conditional*
3 *release, and may order such other further conditions with which the*
4 *person must comply if the person is returned to either transitional release*
5 *or conditional release.*

6 *(e) After a minimum of five years—~~have~~ has passed in which the*
7 *person has been free of violations of conditions of such person's treatment*
8 *plan, the treatment staff, or other treatment providers directed by the*
9 *court, may examine such person to determine if the person's mental*
10 *abnormality or personality disorder has **significantly** changed so as to*
11 *warrant such person being considered for final discharge. The individual*
12 *preparing the report shall forward the report to the court. The court shall*
13 *review the same. If the court determines that probable cause exists to*
14 *believe that the person's mental abnormality or personality disorder has*
15 *so changed that the person is safe to be entitled to final discharge, the*
16 *court shall set a formal hearing on the issue. The attorney general shall*
17 *have the burden of proof to show beyond a reasonable doubt that the*
18 *person's mental abnormality or personality disorder remains such that*
19 *such person is not appropriate for final discharge. The person shall have*
20 *the same rights as enumerated in K.S.A. 59-29a06, and amendments*
21 *thereto. Subsequent to either a court review or a hearing, the court shall*
22 *issue an appropriate order with findings of fact. The order of the court*
23 *shall be provided to the attorney general, the person and the secretary.*

24 *(f) If, after a hearing, the court is convinced beyond a reasonable*
25 *doubt that the person is not appropriate for final discharge, the court shall*
26 *continue custody of the person with the secretary for placement in a secure*
27 *facility, or on transitional or conditional release. Otherwise, the court*
28 *shall order the person finally discharged. In the event the court does not*
29 *order final discharge of the person, the person still retains the right to*
30 *annual reviews.*

31 ~~(f)~~(g) The final discharge shall not prevent the person from being
32 prosecuted for any criminal acts which the person is alleged to have
33 committed or from being subject in the future to a subsequent commitment
34 under this act.

35 ~~Sec. 6—K.S.A. 2017 Supp. 59-29a22 is hereby amended to read as~~
36 ~~follows: 59-29a22. (a) As used in this section:~~

37 ~~(1) "Person" means any individual:~~

38 ~~(A) Who is receiving services for mental illness and who is admitted,~~
39 ~~detained, committed, transferred or placed in the custody of the secretary~~
40 ~~for aging and disability services under the authority of K.S.A. 22-3219,~~
41 ~~22-3302, 22-3303, 22-3428a, 22-3429, 22-3430, 59-29a05, 75-5209 and~~
42 ~~76-1306, and amendments thereto.~~

43 ~~(B) In the custody of the secretary for aging and disability services~~

1 after being found a sexually violent predator pursuant to the Kansas
2 sexually violent predator act, including any sexually violent predator
3 placed on transitional release.

4 (2) "~~Restraints~~" means the application of any devices, other than
5 human force alone, to any part of the body of the person for the purpose of
6 preventing the person from causing injury to self or others.

7 (3) "~~Seclusion~~" means the placement of a person, alone, in a room,
8 where the person's freedom to leave is restricted and where the person is
9 not under continuous observation.

10 (4) "~~Emergency lockdown~~" means a safety measure used to isolate all
11 or a designated number of persons greater than one to their rooms for a
12 period necessary to ensure a safe and secure environment.

13 (5) "~~Individual person management plan~~" means a safety measure
14 used to isolate an individual person when the person presents a safety or
15 security risk that cannot be addressed through routine psychiatric methods.

16 (b) Each person shall have the following statutory rights:

17 (1) ~~Upon admission or commitment, to be informed orally and in~~
18 ~~writing of the person's rights under this section. Copies of this section shall~~
19 ~~be posted conspicuously in each facility, and shall be available to the~~
20 ~~person's guardian and immediate family.~~

21 (2) ~~To refuse to perform labor which is of financial benefit to the~~
22 ~~facility in which the person is receiving treatment or service. Privileges or~~
23 ~~release from the facility may not be conditioned upon the performance of~~
24 ~~any labor which is regulated by this subsection. Tasks of a personal~~
25 ~~housekeeping nature are not considered compensable labor. A person may~~
26 ~~voluntarily engage in therapeutic labor which is of financial benefit to the~~
27 ~~facility if such labor is compensated in accordance with a plan approved~~
28 ~~by the department and if:~~

29 (A) ~~The labor is an integrated part of the person's treatment plan;~~

30 (B) ~~the labor is supervised by a staff member who is qualified to~~
31 ~~oversee the therapeutic aspects of the activity;~~

32 (C) ~~the person has given written informed consent to engage in such~~
33 ~~labor and has been informed that such consent may be withdrawn at any~~
34 ~~time; and~~

35 (D) ~~the labor involved is evaluated for its appropriateness by the staff~~
36 ~~of the facility at least once every 180 days.~~

37 (3) ~~To receive adequate treatment appropriate for such person's~~
38 ~~condition.~~

39 (4) ~~To be informed of such person's treatment and care and to~~
40 ~~participate in the planning of such treatment and care.~~

41 (5) ~~To refuse to consent to the administration of any medication~~
42 ~~prescribed for medical or psychiatric treatment, except in a situation in~~
43 ~~which the person is in a mental health crisis and less restrictive or intrusive~~

1 ~~measures have proven to be inadequate or clinically inappropriate.~~
2 ~~Treatment for a mental health crisis shall include medication or treatment~~
3 ~~necessary to prevent serious physical harm to the person or to others. After~~
4 ~~full explanation of the benefits and risks of such medication, the~~
5 ~~medication may be administered over the person's objection, except that~~
6 ~~the objection shall be recorded in the person's medical record and at the~~
7 ~~same time written notice thereof shall be forwarded to the medical director~~
8 ~~of the treatment facility or the director's designee. Within five days after~~
9 ~~receiving such notice, excluding Saturdays, Sundays and legal holidays,~~
10 ~~the medical director or designee shall deliver to the person's medical~~
11 ~~provider the medical director's or designee's written decision concerning~~
12 ~~the administration of that medication, and a copy of that decision shall be~~
13 ~~placed in the person's medical record.~~

14 ~~(A) Medication may not be used as punishment, for the convenience~~
15 ~~of staff, as a substitute for a treatment program or in quantities that~~
16 ~~interfere with a person's treatment program.~~

17 ~~(B) A person will have the right to have explained the nature of all~~
18 ~~medications prescribed, the reason for the prescription and the most~~
19 ~~common side effects and, if requested, the nature of any other treatments~~
20 ~~ordered.~~

21 ~~(6) To be subjected to restraint, seclusion, emergency lockdown,~~
22 ~~individual person management plan, or any combination thereof, only as~~
23 ~~provided in this subsection.~~

24 ~~(A) Restraints, seclusion, or both, may be used in the following~~
25 ~~circumstances:~~

26 ~~(i) If it is determined by medical staff to be necessary to prevent~~
27 ~~immediate substantial bodily injury to the person or others and that other~~
28 ~~alternative methods to prevent such injury are not sufficient to accomplish~~
29 ~~this purpose. When used, the extent of the restraint or seclusion applied to~~
30 ~~the person shall be the least restrictive measure necessary to prevent such~~
31 ~~injury to the person or others, and the use of restraint or seclusion in a~~
32 ~~treatment facility shall not exceed three hours without medical~~
33 ~~reevaluation. When restraints or seclusion are applied, there shall be~~
34 ~~monitoring of the person's condition at a frequency determined by the~~
35 ~~treating physician or licensed psychologist, which shall be no less than~~
36 ~~once per each 30 minutes. The superintendent of the treatment facility or a~~
37 ~~physician or licensed psychologist shall sign a statement explaining the~~
38 ~~treatment necessity for the use of any restraint or seclusion and shall make~~
39 ~~such statement a part of the permanent treatment record of the person.~~

40 ~~(ii) For security reasons during transport to or from the person's unit,~~
41 ~~including, but not limited to, transport to another treatment or health care~~
42 ~~facility, another secure facility or court. Any person committed or~~
43 ~~transferred to a hospital or other health care facility for medical care may~~

1 be isolated for security reasons within a locked area.

2 ~~(B) Emergency lockdown may be used in the following~~
3 ~~circumstances:~~

4 ~~(i) When necessary as an emergency measure as needed for security~~
5 ~~purposes, to deal with an escape or attempted escape, the discovery of a~~
6 ~~dangerous weapon or explosive device in the unit or facility or the receipt~~
7 ~~of reliable information that a dangerous weapon or explosive device is in~~
8 ~~the unit or facility, to prevent or control a riot or the taking of a hostage or~~
9 ~~for the discovery of contraband or a unit-wide search. An emergency~~
10 ~~lockdown order may be authorized only by the superintendent of the~~
11 ~~facility or the superintendent's designee.~~

12 ~~(ii) During a period of emergency lockdown, the status of each person~~
13 ~~shall be reviewed every 30 minutes to ensure the safety of the person, and~~
14 ~~each person who is locked in a room without a toilet shall be given an~~
15 ~~opportunity to use a toilet at least once every hour, or more frequently if~~
16 ~~medically indicated.~~

17 ~~(iii) The facility shall have a written policy covering the use of~~
18 ~~emergency lockdown that ensures the safety of the individual is secured~~
19 ~~and that there is regular, frequent monitoring by trained staff to care for~~
20 ~~bodily needs as may be required.~~

21 ~~(iv) An emergency lockdown order may only be in effect for the~~
22 ~~period of time needed to preserve order while dealing with the situation~~
23 ~~and may not be used as a substitute for adequate staffing.~~

24 ~~(C) Individual person management plan may be used in any of the~~
25 ~~following situations:~~

26 ~~(i) As needed when a person demonstrates or threatens substantial~~
27 ~~injury to others, and routine psychiatric methods have been ineffective or~~
28 ~~are unlikely to be effective in reducing such risk.~~

29 ~~(ii) As needed for safety or security purposes, *for the behavioral*~~
30 ~~*management in situations including, but not limited to:*~~

31 ~~(a) *to deal ~~Dealing~~ with an escape or attempted escape,;*~~

32 ~~(b) the discovery of a dangerous weapon or explosive device in the~~
33 ~~unit or facility or the receipt of reliable information that a dangerous~~
34 ~~weapon or explosive device is in the unit or facility,;~~

35 ~~(c) to prevent *preventing* or control *controlling* a riot or;~~

36 ~~(d) the taking of a hostage or;~~

37 ~~(e) *the disruption of the therapeutic environment on the unit;* or~~

38 ~~(f) for the discovery of contraband.~~

39 ~~(iii) The status of the person shall be reviewed every 30 minutes to~~
40 ~~ensure the safety of the person.~~

41 ~~(D) Restraint, seclusion, emergency lockdown, individual person~~
42 ~~management plan, or any combination thereof, may be used in any other~~
43 ~~situation deemed necessary by treatment staff for the safety of a person or~~

1 persons, facility staff or visitors. In all situations, restraint, seclusion,
2 emergency lockdown, or individual person management plan shall never
3 be used as a punishment or for the convenience of staff.

4 (E) A person may be locked or restricted in such person's room
5 during the night shift if such person resides in a unit in which each room is
6 equipped with a toilet and sink or, if a person does not have a toilet in the
7 room, if such person is given an opportunity to use a toilet at least once
8 every hour, or more frequently if medically indicated.

9 (7) To not be subject to such procedures as psychosurgery,
10 electroshock therapy, experimental medication, aversion therapy or
11 hazardous treatment procedures without the written consent of the person
12 or the written consent of a parent or legal guardian, if such person is a
13 minor or has a legal guardian provided that the guardian has obtained
14 authority to consent to such from the court which has venue over the
15 guardianship following a hearing held for that purpose.

16 (8) To individual religious worship within the facility if the person
17 desires such an opportunity, as long as it complies with applicable laws
18 and facility rules and policies. The provisions for worship shall be
19 available to all persons on a nondiscriminatory basis. No individual may
20 be coerced into engaging in any religious activities.

21 (9) To a humane psychological and physical environment within the
22 hospital facilities. All facilities shall be designed to afford patients with
23 comfort and safety, to promote dignity and ensure privacy. Facilities shall
24 also be designed to make a positive contribution to the effective attainment
25 of the treatment goals of the hospital.

26 (10) To confidentiality of all treatment records and, as permitted by
27 other applicable state or federal laws, to inspect and, upon receipt of
28 payment of reasonable costs, to receive a copy of such records. The head
29 of any treatment facility or designee who has the records may refuse to
30 disclose portions of such records if the head of the treatment facility or
31 designee states in writing that such disclosure will likely be injurious to
32 the welfare of the person.

33 (11) Except as otherwise provided, to not be filmed or taped, unless
34 the person signs an informed and voluntary consent that specifically
35 authorizes a named individual or group to film or tape the person for a
36 particular purpose or project during a specified time period. The person
37 may specify in such consent periods during which, or situations in which,
38 the person may not be filmed or taped. If a person is legally incompetent,
39 such consent shall be granted on behalf of the person by the person's
40 guardian. A person may be filmed or taped for security purposes without
41 the person's consent.

42 (12) To be informed in writing upon or at a reasonable time after
43 admission, of any liability that the patient or any of the patient's relatives

1 may have for the cost of the patient's care and treatment and of the right to
2 receive information about charges for care and treatment services.

3 ~~(13) To be treated with respect and recognition of the patient's dignity
4 and individuality by all employees of the treatment facility.~~

5 ~~(14) To send and receive sealed mail to or from legal counsel, the
6 courts, the secretary for aging and disability services, the superintendent of
7 the treatment facility, the agency designated as the developmental
8 disabilities protection and advocacy agency pursuant to P.L. 94-103, as
9 amended, private physicians and licensed psychologists. A person who is
10 indigent may have reasonable access to letter-writing materials.~~

11 ~~(15) To send and receive mail with reasonable limitations. A person's
12 mail is subject to physical examination and inspection for contraband, as
13 defined by facility rules and policies.~~

14 ~~(A) An officer or employee of the facility at which the person is
15 placed may delay delivery of the mail to the person for a reasonable period
16 of time to verify whether the mail contains contraband, as defined by
17 facility rules and policies, or whether the person named as the sender
18 actually sent the mail. If contraband is found, such contraband may be
19 returned to the sender or confiscated by the facility. If the officer or staff
20 member cannot determine whether the person named as the sender actually
21 sent the mail, the officer or staff member may return the mail to the sender
22 along with notice of the facility mail policy.~~

23 ~~(B) The superintendent of the facility or the superintendent's designee
24 may, in accordance with the standards and the procedure under subsection
25 (e), authorize a member of the facility treatment staff to read the mail, if
26 the superintendent or the superintendent's designee has reason to believe
27 that the mail could pose a threat to security at the facility or seriously
28 interfere with the treatment, rights, or safety of the person or others.~~

29 ~~(C) A person may not receive through the mail any sexually explicit
30 materials, items that are considered contraband, as defined by facility rules
31 and policies, or items deemed to jeopardize the person's individual
32 treatment, another person's treatment or the therapeutic environment of the
33 facility.~~

34 ~~(16) Reasonable access to a telephone to make and receive telephone
35 calls within reasonable limits.~~

36 ~~(17) To wear and use such person's own clothing and toilet articles, as
37 long as such wear and use complies with facility rules and policies, or to
38 be furnished with an adequate allowance of clothes if none are available.~~

39 ~~(18) To possess personal property in a reasonable amount, as long as
40 the property complies with state laws and facility rules and policies, and be
41 provided a reasonable amount of individual storage space pursuant to
42 facility rules and policies. In no event shall a person be allowed to possess
43 or store contraband.~~

1 ~~(19) Reasonable protection of privacy in such matters as toileting and~~
2 ~~bathing.~~

3 ~~(20) To see a reasonable number of visitors who do not pose a threat~~
4 ~~to the safety and security or therapeutic climate of the person, other~~
5 ~~persons, visitors or the facility.~~

6 ~~(21) To present grievances under the procedures established by each~~
7 ~~facility on the person's own behalf.~~

8 ~~(22) To spend such person's money as such person chooses with~~
9 ~~reasonable limitations, except under the following circumstances: (A)~~
10 ~~When restricted by facility rules and policies; or (B) to the extent that~~
11 ~~authority over the money is held by another, including the parent of a~~
12 ~~minor, a court-appointed guardian of the person's estate or a representative~~
13 ~~payee. A treatment facility may, as a part of its security procedures, use a~~
14 ~~trust account in lieu of currency that is held by a person, and may establish~~
15 ~~reasonable policies governing account transactions.~~

16 ~~(c) (1) A person's rights under subsections (b)(15) to (b)(22) may be~~
17 ~~denied for cause by the superintendent of the facility or the~~
18 ~~superintendent's designee, or when medically or therapeutically~~
19 ~~contraindicated as documented by the person's physician, licensed~~
20 ~~psychologist or licensed master's level psychologist in the person's~~
21 ~~treatment record. The individual shall be informed in writing of the~~
22 ~~grounds for withdrawal of the right and shall have the opportunity for a~~
23 ~~review of the withdrawal of the right in an informal hearing before the~~
24 ~~superintendent of the facility or the superintendent's designee. There shall~~
25 ~~be documentation of the grounds for withdrawal of rights in the person's~~
26 ~~treatment record.~~

27 ~~(2) Notwithstanding subsection (c)(1), when the facility makes an~~
28 ~~administrative decision that applies equally to all persons and there is a~~
29 ~~legitimate governmental reason for the decision, notice of the decision is~~
30 ~~all that is required.~~

31 ~~(d) The secretary for aging and disability services shall establish~~
32 ~~procedures to assure protection of persons' rights guaranteed under this~~
33 ~~section.~~

34 ~~(e) No person may intentionally retaliate or discriminate against any~~
35 ~~person or employee for contacting or providing information to any state~~
36 ~~official or to an employee of any state protection and advocacy agency, or~~
37 ~~for initiating, participating in, or testifying in a grievance procedure or in~~
38 ~~an action for any remedy authorized under this section.~~

39 ~~(f) (1) Proceedings under this section or any other appeal concerning~~
40 ~~an action by the Kansas department for aging and disability services shall~~
41 ~~be governed under the Kansas administrative procedure act and the Kansas~~
42 ~~judicial review act. A person appealing any alleged violations of this~~
43 ~~section or any other agency determination shall exhaust all administrative~~

1 remedies available through the Larned state hospital, including the sexual
2 predator treatment program, before having any right to request a hearing
3 under the Kansas administrative procedure act.

4 ~~(2) A final agency determination shall include notice of the right to
5 appeal such determination only to the office of administrative hearings to
6 a presiding officer, as defined in K.S.A. 77-514, and amendments thereto.
7 Within 30 days after service of a final agency determination and the notice
8 of right to appeal, the appellant may file a request for hearing in writing
9 with the office of administrative hearings for a review of that
10 determination. Any request for hearing must be accompanied by a copy of
11 the final agency determination, including all documentation submitted
12 through Larned state hospital and all agency responses. Failure to timely
13 request a hearing constitutes a waiver of the right to any review. The
14 request shall be examined by the presiding officer assigned. If the
15 appellant seeks to challenge the final agency determination on any grounds
16 other than material facts in controversy or agency violation of a relevant
17 rule, regulation or statute, the appellant shall express such allegations with
18 particularity within the request for hearing. If it plainly appears from the
19 face of the request and accompanying final agency determination that the
20 appellant failed to state a claim on which relief could be granted, or the
21 appellant failed to demonstrate exhaustion, the request shall be dismissed.
22 The burden shall be on the appellant to prove by a preponderance of the
23 evidence that the agency action violated a specific rule, regulation or
24 statute. If the request for hearing does not allege a violation of a specific
25 rule, regulation or statute, the burden shall be on the appellant to prove by
26 a preponderance of the evidence that the agency had no legitimate
27 government interest in taking such action. Any dispositive ruling of the
28 hearing officer assigned by the office of administrative hearings presiding
29 officer shall be deemed an initial order under the Kansas administrative
30 procedure act.~~

31 ~~(3) The person shall participate by telephone or other electronic
32 means at any hearing before the office of administrative hearings or any
33 proceeding under the Kansas administrative procedure act or the Kansas
34 judicial review act, unless the presiding officer or court determines that the
35 interests of justice require an in-person proceeding. Notwithstanding
36 K.S.A. 77-609, and amendments thereto, if an in-person proceeding is
37 necessary, such proceeding shall be conducted at the place where the
38 person is committed.~~

39 ~~(4) Except as otherwise provided in the Kansas sexually violent
40 predator act and notwithstanding K.S.A. 77-609, and amendments thereto,
41 venue shall be in Pawnee county, Kansas, for all proceedings brought
42 pursuant to the Kansas judicial review act.~~

43 Sec.—7. 6. K.S.A. 2017 Supp. 59-29a02, 59-29a07, 59-29a08, 59-

1 29a11; **and** 59-29a19 ~~and 59-29a22~~ are hereby repealed.

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