

HOUSE BILL No. 2697

By Committee on Judiciary

2-11

Proposed Amendments to HB 2697 - KDADS
House Judiciary Committee
Prepared by the Office of Revisor of Statutes
March 14, 2022

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to competency to stand trial; mobile competency evaluations; amending
3 K.S.A. 2021 Supp. 22-3302, 22-3303, 22-3305, 22-3428 and 22-3429
4 and repealing the existing sections.

K.S.A. 22-3301 and

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

7 Section 1. K.S.A. 2021 Supp. 22-3302 is hereby amended to read as
8 follows: 22-3302. (1)(a) At any time after the defendant has been charged
9 with a crime and before pronouncement of sentence, the defendant, the
10 defendant's counsel or the prosecuting county or district attorney may
11 request a determination of the defendant's competency to stand trial. If,
12 upon the request of either party or upon the judge's own knowledge and
13 observation, the judge before whom the case is pending finds that there is
14 reason to believe that the defendant is incompetent to stand trial, the
15 proceedings shall be suspended and a hearing conducted to determine the
16 competency of the defendant.

Section 1. K.S.A. 22-3301 is hereby amended:
See attachment

prosecuting

17 (2)(b) If the defendant is charged with a felony, the hearing to
18 determine the competency of the defendant shall be conducted by a district
19 judge.

Renumber sections

20 (3)(A)(c) (1) The court shall determine the issue of competency and
21 may impanel a jury of six persons to assist in making the determination.
22 The court may order a psychiatric or psychological examination of the
23 defendant. To facilitate the examination, the court may:

24 (a) Commit the defendant to (A) Order an evaluation be completed by
25 the state security hospital or its agent, a state hospital or its agent or any
26 appropriate state, county, private institution or facility for examination and
27 report to the court, except that the court shall not commit the defendant to
28 the state security hospital or any other state institution unless, prior to such
29 commitment, the director of a local county or private institution
30 recommends to the court and to the secretary for aging and disability
31 services that examination of the defendant should be performed at a state
32 institution to be conducted in person or by use of available electronic
33 means while the defendant is in jail, at any secure location or on pretrial
34 release;

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or

35 (b)(B) designate any appropriate psychiatric or psychological clinic,
36 mental health center or other psychiatric or psychological facility to

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state, county or private institution or

1 conduct the examination while the defendant is in jail, *at any secure*  
2 *location* or on pretrial release; or

3 ~~(e)(C)~~ appoint ~~two a qualified licensed physicians~~ *physician* or a  
4 ~~licensed psychologists, or one of each,~~ *psychologist* to examine the  
5 defendant and report to the court.

who is qualified through training or experience

6 ~~(B)(2)~~ If the court ~~commits~~ *orders* the defendant *committed* to an  
7 institution or facility for the examination, the commitment shall be for a  
8 period not to exceed 60 days *from the date of admission* or until the  
9 examination is completed, whichever is the shorter period of time. No  
10 statement made by the defendant in the course of any examination  
11 provided for by this section, whether or not the defendant consents to the  
12 examination, shall be admitted in evidence against the defendant in any  
13 criminal proceeding.

14 ~~(C)(3)~~ *Before the expiration of the 60-day evaluation period, the*  
15 *professional approved by the court to examine the defendant or, if the*  
16 *defendant is committed for inpatient examination, the chief medical officer*  
17 *or head of the appropriate facility shall certify to the court whether the*  
18 *defendant is competent to stand trial.*

institution or

19 (4) Upon notification of the court that a defendant committed for  
20 psychiatric or psychological examination under this subsection has been  
21 found competent to stand trial, the court shall order that the defendant be  
22 returned no later than seven days after receipt of the notice for proceedings  
23 under this section. If the defendant is not returned within that time, the  
24 county in which the proceedings will be held shall pay the costs of  
25 maintaining the defendant at the institution or facility for the period of  
26 time the defendant remains at the institution or facility in excess of the  
27 seven-day period.

28 ~~(4)(d)~~ If the defendant is found to be competent, the proceedings  
29 which have been suspended shall be resumed. If the proceedings were  
30 suspended before or during the preliminary examination, the judge who  
31 conducted the competency hearing may conduct a preliminary  
32 examination or, if a district magistrate judge was conducting the  
33 proceedings prior to the competency hearing, the judge who conducted the  
34 competency hearing may order the preliminary examination to be heard by  
35 a district magistrate judge.

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

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

42 ~~(7)(g)~~ The defendant shall be present personally at all proceedings  
43 under this section.

1 Sec. 2. K.S.A. 2021 Supp. 22-3303 is hereby amended to read as  
 2 follows: 22-3303. (a) (1) A defendant who is charged with a crime and is  
 3 found to be incompetent to stand trial shall be ~~committed~~ *ordered* for  
 4 evaluation and treatment to ~~any, conducted on an outpatient or inpatient~~  
 5 ~~basis, by the state security hospital or its agent, a state hospital or its~~  
 6 ~~agent or any~~ appropriate state, county, private institution or facility. At the  
 7 time of such commitment the institution of commitment shall notify the  
 8 county or district attorney of the county in which the criminal proceedings  
 9 are pending for the purpose of providing victim notification. Any such  
 10 commitment shall be for a period not to exceed 90 days. Within 90 days  
 11 after the defendant's commitment to such institution, the chief medical  
 12 officer of such institution shall

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Evaluation or restorative treatment of a defendant shall not be conducted in a jail unless the administrative head or law enforcement official in charge of the jail agrees to such evaluation or restorative treatment being conducted in such jail.

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

may

17 (3) For a defendant charged with a misdemeanor offense, outpatient  
 18 evaluation and treatment shall be ordered to be conducted by ~~any~~  
 19 ~~appropriate psychiatric or psychological clinic or facility, mental health~~  
 20 ~~center, county institution or facility or a private institution or facility.~~

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state, county or private

21 (4) For a defendant charged with a felony offense, outpatient  
 22 evaluation and treatment may be ordered to be conducted by ~~any~~  
 23 ~~appropriate psychiatric or psychological clinic or facility, mental health~~  
 24 ~~center, county institution or facility, private institution or facility or other~~  
 25 ~~appropriate secure facility.~~

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26 (5) For a defendant charged with a felony offense, a commitment to  
 27 the state security hospital or its agent or a state hospital or its agent may  
 28 be conducted on a inpatient basis or, if the defendant meets the screening  
 29 criteria established by the state security hospital, on an outpatient basis.

30 (6) At the commencement of outpatient treatment, the institution or  
 31 facility conducting the treatment shall notify the ~~county or district~~ attorney  
 32 in the county where the criminal proceeding is pending for the purpose of  
 33 providing victim notification.

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34 (b) (1) Except as provided in subsection (d), if the defendant is  
 35 ordered to receive an evaluation and treatment on an outpatient basis  
 36 conducted by ~~any appropriate psychiatric or psychological clinic or~~  
 37 ~~facility, mental health center, county institution or facility or a private~~  
 38 ~~institution or facility, the chief medical officer of such institution or head~~  
 39 ~~of such facility shall certify to the court, within 90 days after the~~  
 40 ~~commencement of outpatient treatment, whether the defendant has a~~  
 41 ~~substantial probability of attaining competency to stand trial in the~~  
 42 ~~foreseeable future. The court shall set a hearing within 21 days after~~  
 43 ~~certification unless exceptional circumstances warrant delay, for the~~

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state, county

1 *purpose of determining competency.*

2 (2) If such probability does exist, the court shall order the defendant  
3 to remain in *jail or at a secure location, on pretrial release pursuant to*  
4 *K.S.A. 22-2802, and amendments thereto, or at an appropriate state-*  
5 *county, private institution or facility setting* until the defendant attains  
6 competency to stand trial or for a period of six months from the date of ~~the~~  
7 ~~original commitment~~ *the commencement of outpatient treatment,*  
8 whichever occurs first. If such probability does not exist, the court shall  
9 order the ~~secretary for aging and disability services~~ *county or district*  
10 *attorney where the charges are filed* to commence involuntary  
11 commitment proceedings pursuant to article 29 of chapter 59 of the Kansas  
12 Statutes Annotated, and amendments thereto. ~~The court shall issue an~~  
13 ~~order for care and treatment within 21 days of receipt of the certification~~  
14 ~~from the chief medical officer of the institution or head of the facility~~  
15 ~~unless exceptional circumstances warrant delay.~~ When a defendant is  
16 charged with any off-grid felony, any nondrug severity level 1 through 3  
17 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or  
18 21-3719, prior to their repeal, or K.S.A. 2021 Supp. 21-5505(b), 21-  
19 5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto,  
20 and commitment proceedings have commenced, for such proceeding,  
21 "mentally ill person subject to involuntary commitment for care and  
22 treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e),  
23 and amendments thereto, who is likely to cause harm to self and others, as  
24 defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other  
25 provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

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26 (2)(3) If a defendant who was found to have had a substantial  
27 probability of attaining competency to stand trial, as provided in  
28 ~~subsection (1) paragraph (2),~~ has not attained competency to stand trial  
29 within six months from the date of the ~~original commitment,~~ the court  
30 shall order the ~~county or district~~ *attorney where the charges are filed or*  
31 *the secretary for aging and disability services* to commence involuntary  
32 commitment proceedings pursuant to article 29 of chapter 59 of the Kansas  
33 Statutes Annotated, and amendments thereto. ~~The court shall issue an~~  
34 ~~order for care and treatment within 21 days of receipt of the certification~~  
35 ~~from the chief medical officer of the institution or the head of the facility~~  
36 ~~unless exceptional circumstances warrant delay.~~ When a defendant is  
37 charged with any off-grid felony, any nondrug severity level 1 through 3  
38 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or  
39 21-3719, prior to their repeal, K.S.A. 2021 Supp. 21-5505(b), 21-5506(b),  
40 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto, and  
41 commitment proceedings have commenced, for such proceeding,  
42 "mentally ill person subject to involuntary commitment for care and  
43 treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e),

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1 and amendments thereto, who is likely to cause harm to self and others, as  
2 defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other  
3 provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

4 ~~(3)~~(4) When reasonable grounds exist to believe that a defendant who  
5 has been adjudged incompetent to stand trial is competent, the court in  
6 which the criminal case is pending shall conduct a hearing in accordance  
7 with K.S.A. 22-3302, and amendments thereto, to determine the person's  
8 present mental condition. Such court shall give reasonable notice of such  
9 hearings to the ~~prosecuting county or district~~ attorney, the defendant and  
10 the defendant's attorney of record, if any. The ~~prosecuting county or~~  
11 ~~district~~ attorney shall provide victim notification. If the court, following  
12 such hearing, finds the defendant to be competent, the proceedings  
13 pending against the defendant shall be resumed.

14 ~~(4)~~(5) A defendant committed to a public institution under the  
15 provisions of this section who is thereafter sentenced for the crime charged  
16 at the time of commitment ~~may~~ be credited with all ~~or any part~~ of the time  
17 during which the defendant was committed and confined in such public  
18 institution.

19 (c) (1) *Except as provided in subsection (d), if a defendant is ordered*  
20 *or met criteria to receive an evaluation and treatment on an outpatient*  
21 *basis conducted by the state security hospital or its agent or a state*  
22 *hospital or its agent, the chief medical officer shall certify to the court,*  
23 *within 90 days after commencement of treatment, whether the defendant*  
24 *has a substantial probability of attaining competency to stand trial in the*  
25 *foreseeable future.*

26 (2) *If such probability does exist, the court shall order the defendant*  
27 *to remain in jail or at a secure location, on pretrial release pursuant to*  
28 *K.S.A. 22-2802, and amendments thereto, or at an appropriate setting*  
29 *until the defendant attains competency to stand trial or for a period of six*  
30 *months from the date of the commencement of outpatient treatment,*  
31 *whichever occurs first. If such probability does not exist, the court shall*  
32 *order the ~~county or district~~ attorney where the charges are filed or the*  
33 *secretary for aging and disability services to commence involuntary*  
34 *commitment proceedings pursuant to article 29 of chapter 59 of the*  
35 *Kansas Statutes Annotated, and amendments thereto. ~~The court shall issue~~*  
36 *~~an order for care and treatment~~ within 21 days of receipt of the*  
37 *certification from the chief medical officer of the institution or the head of*  
38 *the facility unless exceptional circumstances warrant delay. When a*  
39 *defendant is charged with any off-grid felony, any nondrug severity level 1*  
40 *through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-*  
41 *3603 or 21-3719, prior to their repeal, or K.S.A. 2021 Supp. 21-5505(b),*  
42 *21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments*  
43 *thereto, and commitment proceedings have commenced, for such*

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

7 (3) If a defendant who was found to have had a substantial  
8 probability of attaining competency to stand trial, as provided in  
9 paragraph (2), has not attained competency to stand trial within six  
10 months from the date of the original commitment, the court shall order the  
11 ~~county or district~~ attorney where the charges are filed or the secretary for  
12 aging and disability services to commence involuntary commitment  
13 proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes  
14 Annotated, and amendments thereto. ~~The court shall issue an order for~~  
15 ~~care and treatment~~ within 21 days of receipt of the certification from the  
16 chief medical officer of the institution or the head of the facility unless  
17 exceptional circumstances warrant delay. When a defendant is charged  
18 with any off-grid felony, any nondrug severity level 1 through 3 felony or a  
19 violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior  
20 to their repeal, or K.S.A. 2021 Supp. 21-5505(b), 21-5506(b), 21-5508(b),  
21 21-5604(b) or 21-5812(b), and amendments thereto, and commitment  
22 proceedings have commenced, for such proceeding, "mentally ill person  
23 subject to involuntary commitment for care and treatment" means a  
24 mentally ill person, as defined in K.S.A. 59-2946(e), and amendments  
25 thereto, who is likely to cause harm to self and others, as defined in K.S.A.  
26 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A. 59-  
27 2946(f), and amendments thereto, shall not apply.

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

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

43 (d) (1) If the defendant is ordered or met criteria to receive an

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1 evaluation and treatment on an outpatient basis and the chief medical  
 2 officer of the ~~state security hospital or a state hospital or the head of any~~  
 3 ~~appropriate psychiatric or psychological clinic, mental health center or~~  
 4 county or private institution or facility determines that the defendant's  
 5 mental health condition or behaviors warrant terminating outpatient  
 6 treatment services and commencing evaluation and treatment on an  
 7 inpatient basis, the chief medical officer ~~or head~~ of the institution shall  
 8 provide a report to the court within 10 days after outpatient treatment  
 9 services are terminated. Such report shall certify the date that outpatient  
 10 treatment was terminated and the reason inpatient evaluation and  
 11 treatment services are recommended. A copy of such report shall be  
 12 provided to the chief medical officer of the state security hospital. Upon  
 13 receipt of such report, the court shall issue any orders or warrants  
 14 required to facilitate the sheriff of the county where the charges are filed to  
 15 take the defendant into custody and transport such defendant to the state  
 16 security hospital or its agent or a state hospital or its agent for admission  
 17 for inpatient services. The chief medical officer shall submit a report  
 18 pursuant to subsection (e) as to whether the defendant has attained  
 19 competency within 90 days of the defendant's admission to such hospital  
 20 for inpatient evaluation and treatment.

appropriate state,

or the head of the facility

21 (2) The court, ~~county or district attorney~~ where criminal charges are  
 22 pending, the defense counsel for a defendant charged with a felony offense  
 23 who is receiving outpatient evaluation and treatment services and the head  
 24 ~~of any institution~~ where the defendant is receiving outpatient services shall  
 25 provide requested documentation to the state security hospital or its agent  
 26 or the state hospital or its agent for the purpose of managing inpatient  
 27 admission.

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chief medical officer of any institution or  
the head of any facility

28 (e) (1) If the defendant is charged with a felony offense, the court  
 29 may order a defendant to receive inpatient evaluation and treatment at the  
 30 ~~state security hospital or its agent, a state hospital or its agent or a county~~  
 31 or private institution or facility after considering the defendant's mental  
 32 condition, behaviors and the availability of outpatient evaluation and  
 33 treatment options. The chief medical officer of the institution or the head  
 34 of the facility shall certify to the court, within 90 days after the  
 35 commencement of inpatient treatment, whether the defendant has a  
 36 substantial probability of attaining competency to stand trial in the  
 37 foreseeable future.

an appropriate state,

38 (2) If such probability does exist, the court shall order the defendant  
 39 to remain in jail or at a secure location, on pretrial release pursuant to  
 40 K.S.A. 22-2802, and amendments thereto, or at an appropriate setting  
 41 until the defendant attains competency to stand trial or for a period of six  
 42 months from the date of the commencement of inpatient treatment,  
 43 whichever occurs first. If such probability does not exist, the court shall

1 ~~order the county or district~~ attorney where the charges are filed or the  
 2 secretary for aging and disability services to commence involuntary  
 3 commitment proceedings pursuant to article 29 of chapter 59 of the  
 4 Kansas Statutes Annotated, and amendments thereto. ~~The court shall issue~~  
 5 ~~an order for care and treatment~~ within 21 days of receipt of the  
 6 certification from the chief medical officer of the institution or the head of  
 7 the facility unless exceptional circumstances warrant delay. When a  
 8 defendant is charged with any off-grid felony, any nondrug severity level 1  
 9 through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-  
 10 3603 or 21-3719, prior to their repeal, or K.S.A. 2021 Supp. 21-5505(b),  
 11 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments  
 12 thereto, and commitment proceedings have commenced, for such  
 13 proceeding, "mentally ill person subject to involuntary commitment for  
 14 care and treatment" means a mentally ill person, as defined in K.S.A. 59-  
 15 2946(e), and amendments thereto, who is likely to cause harm to self and  
 16 others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The  
 17 other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not  
 18 apply.

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19 (3) If a defendant who was found to have had a substantial  
 20 probability of attaining competency to stand trial, as provided in  
 21 paragraph (2), has not attained competency to stand trial within six  
 22 months from the date of the original commitment, the court shall order the  
 23 ~~county or district~~ attorney where the charges are filed or the secretary for  
 24 aging and disability services to commence involuntary commitment  
 25 proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes  
 26 Annotated, and amendments thereto. ~~The court shall issue an order for~~  
 27 ~~care and treatment~~ within 21 days of receipt of the certification from the  
 28 chief medical officer of the institution or the head of the facility unless  
 29 exceptional circumstances warrant delay. When a defendant is charged  
 30 with any off-grid felony, any nondrug severity level 1 through 3 felony or a  
 31 violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior  
 32 to their repeal, or K.S.A. 2021 Supp. 21-5505(b), 21-5506(b), 21-5508(b),  
 33 21-5604(b) or 21-5812(b), and amendments thereto, and commitment  
 34 proceedings have commenced, for such proceeding, "mentally ill person  
 35 subject to involuntary commitment for care and treatment" means a  
 36 mentally ill person, as defined in K.S.A. 59-2946(e), and amendments  
 37 thereto, who is likely to cause harm to self and others, as defined in K.S.A.  
 38 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A. 59-  
 39 2946(f), and amendments thereto, shall not apply.

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40 (4) When reasonable grounds exist to believe that a defendant who  
 41 has been adjudged incompetent to stand trial is competent, the court in  
 42 which the criminal case is pending shall conduct a hearing in accordance  
 43 with K.S.A. 22-3302, and amendments thereto, to determine the person's



1 present mental condition. Such court shall give reasonable notice of such  
 2 hearings to the ~~county or district~~ attorney, the defendant and the  
 3 defendant's attorney of record, if any. The ~~county or district~~ attorney shall  
 4 provide victim notification. If the court, following such hearing, finds the  
 5 defendant to be competent, the proceedings pending against the defendant  
 6 shall be resumed.

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

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12 (f) (1) Notwithstanding the provisions of K.S.A. 59-29a22, and  
 13 amendments thereto, psychotropic medications may be prescribed for any  
 14 defendant who is ordered or has met the criteria to receive evaluation and  
 15 treatment on an inpatient or outpatient basis at ~~the state security hospital~~  
 16 ~~or its agent, a state hospital or its agent or any appropriate psychiatric or~~  
 17 ~~psychological clinic, mental health center or county or private institution~~  
 18 ~~or facility.~~

an appropriate state,

19 (2) Psychotropic medications shall be prescribed, ordered and  
 20 administered in conformity with accepted clinical practice. Psychotropic  
 21 medication shall be administered only upon the written order of a  
 22 physician or upon a verbal order noted in the defendant's medical records  
 23 and subsequently signed by the physician. The attending physician shall  
 24 regularly review the drug regimen of each defendant under such  
 25 physician's care and shall monitor any symptoms of harmful side effects.

26 (3) Whenever any defendant is receiving psychotropic medications  
 27 that alter the defendant's mental state in such a way as to adversely affect  
 28 the defendant's judgment or hamper the defendant in preparing for or  
 29 participating in any hearing provided for by this section, for two days  
 30 prior to and during any such hearing, the treatment facility shall not  
 31 administer such medication or treatment unless such medication or  
 32 treatment is necessary to sustain the defendant's life or to protect the  
 33 defendant or others. Prior to the hearing, a report of all psychotropic  
 34 medications or other treatment that has been administered to the  
 35 defendant and a copy of any written consent signed by the defendant shall  
 36 be submitted to the court. Counsel for the defendant may preliminarily  
 37 examine the attending physician regarding the administration of any  
 38 medication to the defendant within two days of the hearing and the affect  
 39 that medication may have had on the defendant's judgment or ability to  
 40 prepare for or participate in the hearing. If the court determines that  
 41 medication or other treatment has been administered that adversely affects  
 42 the defendant's judgment or ability to prepare for or participate in the  
 43 hearing, the court may grant the defendant a reasonable continuance to

institution or

1 allow for the defendant to be better able to prepare for or participate in  
2 the hearing. The court shall order that such medication or other treatment  
3 be discontinued until the conclusion of the hearing unless the court finds  
4 that such medication or other treatment is necessary to sustain the  
5 defendant's life or to protect the defendant or others. If the court makes  
6 such a finding, the court shall order the hearing to proceed.

7 ~~(4) When a defendant who is receiving treatment pursuant to this~~  
8 ~~section objects to taking any medication prescribed for psychiatric~~  
9 ~~treatment, and if the defendant continues to object after full explanation of~~  
10 ~~the benefits and risks of such medication, the medication may be~~  
11 ~~administered over the defendant's objection. The defendant's objection~~  
12 ~~shall be recorded in the defendant's medical record and written notice of~~  
13 ~~such objection shall be forwarded to the medical director of the treatment~~  
14 ~~facility or the director's designee. Within five days after receiving such~~  
15 ~~notice, excluding Saturdays, Sundays and legal holidays, the medical~~  
16 ~~director or such director's designee shall issue a written decision~~  
17 ~~concerning the administration of such medication, and a copy of such~~  
18 ~~decision shall be placed in the defendant's medical record.~~

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

21 Sec. 3. K.S.A. 2021 Supp. 22-3305 is hereby amended to read as  
22 follows: 22-3305. (1)(a) Whenever involuntary commitment proceedings  
23 have been commenced by the secretary for aging and disability services ~~or~~  
24 ~~the county or district attorney~~ as required by K.S.A. 22-3303, and  
25 amendments thereto, and the defendant is not committed to a treatment  
26 facility as a patient, the defendant shall remain in the institution where  
27 committed pursuant to K.S.A. 22-3303, and amendments thereto. The  
28 secretary for aging and disability services ~~or the county or district attorney~~  
29 shall promptly notify the court and the ~~county or district attorney~~ of the  
30 county in which the criminal proceedings are pending for the purpose of  
31 providing victim notification, of the result of the involuntary commitment  
32 proceeding.

33 ~~(2)(b)~~ Whenever involuntary commitment proceedings have been  
34 commenced by the secretary for aging and disability services ~~or the county~~  
35 ~~or district attorney~~ as required by K.S.A. 22-3303, and amendments  
36 thereto, and the defendant is committed to a treatment facility as a patient  
37 but thereafter is to be discharged pursuant to the care and treatment act for  
38 mentally ill persons, the defendant shall remain in the institution where  
39 committed pursuant to K.S.A. 22-3303, and amendments thereto, and the  
40 head of the treatment facility shall promptly notify the court and the  
41 ~~county or district attorney~~ of the county in which the criminal proceedings  
42 are pending for the purpose of providing victim notification, that the  
43 defendant is to be discharged.

If a defendant who is charged with a felony, is receiving treatment pursuant to this section and is not deemed a present danger to self or others objects to taking any medication prescribed for the purpose of restoring the defendant to competency,

and to the court where the criminal charges are pending

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The medication may be administered over the defendant's objection only if the court finds that:  
(A) The medication is substantially unlikely to have side effects that may undermine the fairness of the trial;  
(B) the medication is medically appropriate;  
(C) less intrusive alternatives have been considered;  
(D) the medication is necessary to advance significantly important governmental trial interests; and  
(E) the administrative head or law enforcement official in charge of the jail has agreed to having the medication administered over the defendant's objection in the jail

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1 (c) When giving notification to the court and the ~~county or district~~  
 2 attorney pursuant to subsection ~~(1)~~ (a) or ~~(2)~~ (b), the treatment facility  
 3 shall include in such notification an opinion from the head of the treatment  
 4 facility as to whether or not the defendant is now competent to stand trial.  
 5 Upon request of the ~~county or district~~ attorney, the court may set a hearing  
 6 on the issue of whether or not the defendant has been restored to  
 7 competency. If such hearing request is granted, the ~~county or district~~  
 8 attorney shall provide victim notification regarding the hearing date. *Such*  
 9 *hearing request shall be filed within 14 days of completion of the*  
 10 *notification from the head of the treatment facility pursuant to subsection*  
 11 *(a) or (b). The hearing shall take place within 21 days after receipt of the*  
 12 *hearing request unless the court finds that exceptional circumstances*  
 13 *warrant delay of the hearing.* If no such hearing request is made within 14  
 14 days after receipt of notice pursuant to subsection ~~(1)~~ (a) or ~~(2)~~ (b), the  
 15 court shall order the defendant to be discharged from commitment and  
 16 shall dismiss without prejudice the charges against the defendant, and the  
 17 period of limitation for the prosecution for the crime charged shall not  
 18 continue to run until the defendant has been determined to have attained  
 19 competency in accordance with K.S.A. 22-3302, and amendments thereto.  
 20 The ~~county or district~~ attorney shall provide victim notification regarding  
 21 the discharge order.

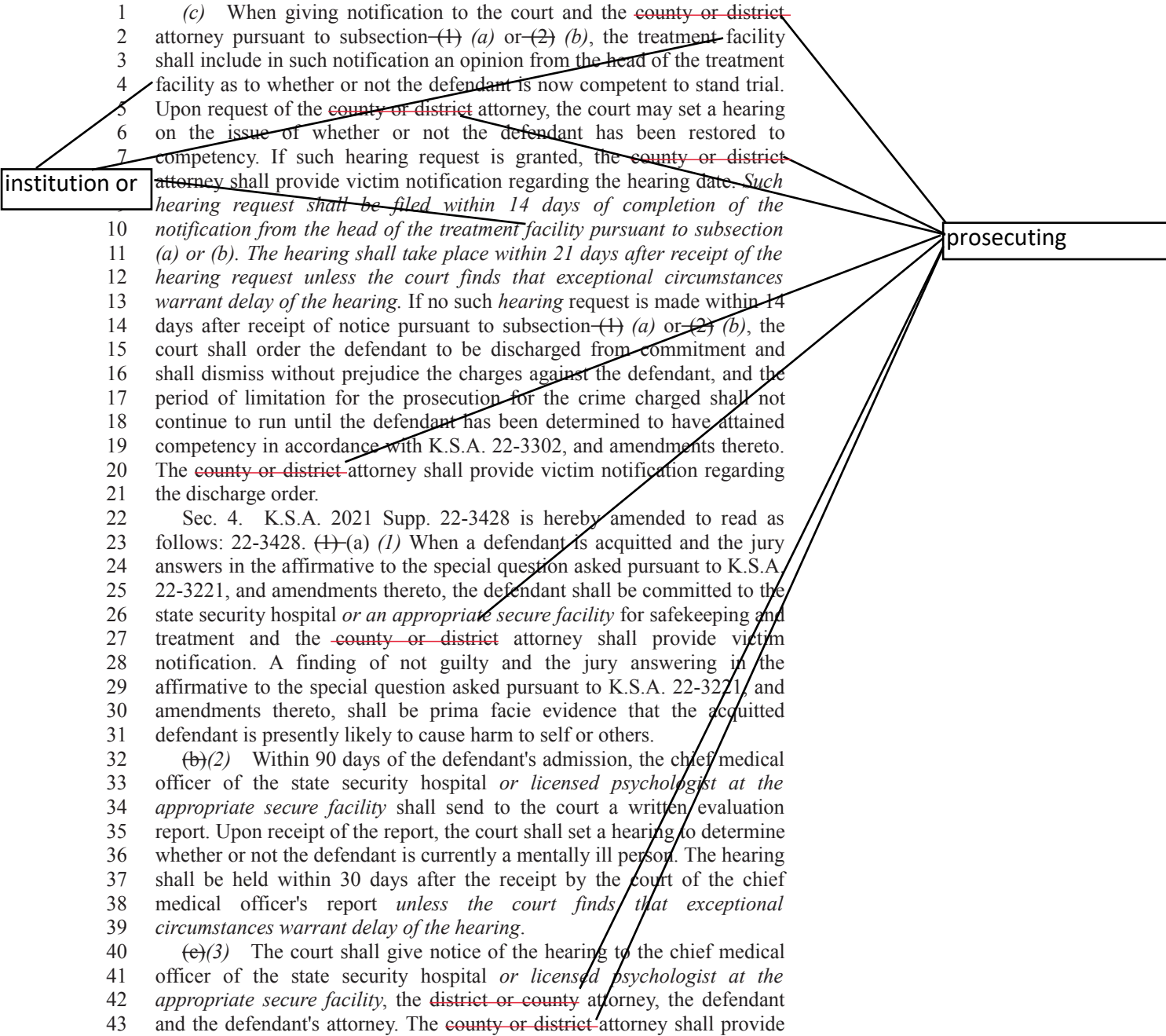
22 Sec. 4. K.S.A. 2021 Supp. 22-3428 is hereby amended to read as  
 23 follows: 22-3428. ~~(1)~~(a) (1) When a defendant is acquitted and the jury  
 24 answers in the affirmative to the special question asked pursuant to K.S.A.  
 25 22-3221, and amendments thereto, the defendant shall be committed to the  
 26 state security hospital *or an appropriate secure facility* for safekeeping and  
 27 treatment and the ~~county or district~~ attorney shall provide victim  
 28 notification. A finding of not guilty and the jury answering in the  
 29 affirmative to the special question asked pursuant to K.S.A. 22-3221, and  
 30 amendments thereto, shall be prima facie evidence that the acquitted  
 31 defendant is presently likely to cause harm to self or others.

32 ~~(b)~~(2) Within 90 days of the defendant's admission, the chief medical  
 33 officer of the state security hospital *or licensed psychologist at the*  
 34 *appropriate secure facility* shall send to the court a written evaluation  
 35 report. Upon receipt of the report, the court shall set a hearing to determine  
 36 whether or not the defendant is currently a mentally ill person. The hearing  
 37 shall be held within 30 days after the receipt by the court of the chief  
 38 medical officer's report *unless the court finds that exceptional*  
 39 *circumstances warrant delay of the hearing.*

40 ~~(e)~~(3) The court shall give notice of the hearing to the chief medical  
 41 officer of the state security hospital *or licensed psychologist at the*  
 42 *appropriate secure facility*, the ~~district or county~~ attorney, the defendant  
 43 and the defendant's attorney. The ~~county or district~~ attorney shall provide

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1 victim notification. The court shall inform the defendant that such  
 2 defendant is entitled to counsel and that counsel will be appointed to  
 3 represent the defendant if the defendant is not financially able to employ  
 4 an attorney as provided in K.S.A. 22-4503 et seq., and amendments  
 5 thereto. The defendant shall remain at the state security hospital pending  
 6 the hearing.

7 ~~(d)~~(4) At the hearing, the defendant shall have the right to present  
 8 evidence and cross-examine witnesses. At the conclusion of the hearing, if  
 9 the court finds by clear and convincing evidence that the defendant is not  
 10 currently a mentally ill person, the court shall dismiss the criminal  
 11 proceeding and discharge the defendant, otherwise the court may commit  
 12 the defendant to the state security hospital *or an appropriate secure*  
 13 *facility* for treatment or may place the defendant on conditional release  
 14 pursuant to subsection ~~(4)~~ (d). The ~~county or district~~ attorney shall provide  
 15 victim notification regarding the outcome of the hearing.

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16 ~~(2)~~(b) Subject to the provisions of subsection ~~(3)~~ (c):

17 ~~(a)~~(1) Whenever it appears to the chief medical officer of the state  
 18 security hospital *or a licensed psychologist at the appropriate secure*  
 19 *facility* that a person committed under subsection ~~(1)~~(d) (a)(4) is not likely  
 20 to cause harm to other persons in a less restrictive hospital environment,  
 21 the officer may transfer the person to any state hospital, subject to the  
 22 provisions of subsection ~~(3)~~ (c). At any time subsequent thereto during  
 23 which such person is still committed to a state hospital, if the chief  
 24 medical officer of that hospital *or the licensed psychologist at the*  
 25 *appropriate secure facility* finds that the person may be likely to cause  
 26 harm or has caused harm, to others, such officer may transfer the person  
 27 back to the state security hospital.

28 ~~(b)~~(2) Any person committed under subsection ~~(1)~~(d) (a)(4) may be  
 29 granted conditional release or discharge as an involuntary patient.

30 ~~(3)~~(c) Before transfer of a person from the state security hospital *or*  
 31 *appropriate secure facility* pursuant to subsection ~~(2)~~(a) (b)(1) or  
 32 conditional release or discharge of a person pursuant to subsection ~~(2)~~(b)  
 33 (b)(2), the chief medical officer of the state security hospital or the state  
 34 hospital where the patient is under commitment *or the licensed*  
 35 *psychologist at the appropriate secure facility* shall give notice to the  
 36 district court of the county from which the person was committed that  
 37 transfer of the patient is proposed or that the patient is ready for proposed  
 38 conditional release or discharge. Such notice shall include, but not be  
 39 limited to: ~~(a)~~ (1) Identification of the patient; ~~(b)~~ (2) the course of  
 40 treatment; ~~(c)~~ (3) a current assessment of the defendant's mental illness; ~~(d)~~  
 41 (4) recommendations for future treatment, if any; and ~~(e)~~ (5)  
 42 recommendations regarding conditional release or discharge, if any. Upon  
 43 receiving notice, the district court shall order that a hearing be held on the

1 proposed transfer, conditional release or discharge. The court shall give  
 2 notice of the hearing to the *appropriate secure facility*, state hospital or  
 3 state security hospital where the patient is under commitment, to the  
 4 ~~district or county~~ attorney of the county from which the person was  
 5 originally ordered committed. The ~~county or district~~ attorney shall provide  
 6 victim notification regarding the hearing. The court shall order the  
 7 involuntary patient to undergo a mental evaluation by a person designated  
 8 by the court. A copy of all orders of the court shall be sent to the  
 9 involuntary patient and the patient's attorney. The report of the court  
 10 ordered mental evaluation shall be given to the ~~district or county~~ attorney,  
 11 the involuntary patient and the patient's attorney at least seven days prior  
 12 to the hearing. The hearing shall be held within 30 days after the receipt by  
 13 the court of the chief medical officer's notice *unless the court finds that*  
 14 *exceptional circumstances warrant delay of the hearing*. The involuntary  
 15 patient shall remain in the *appropriate secure facility*, state hospital or state  
 16 security hospital where the patient is under commitment until the hearing  
 17 on the proposed transfer, conditional release or discharge is to be held. At  
 18 the hearing, the court shall receive all relevant evidence, including the  
 19 written findings and recommendations of the chief medical officer of the  
 20 state security hospital or the state hospital *or the licensed psychologist of*  
 21 *the appropriate secure facility* where the patient is under commitment, and  
 22 shall determine whether the patient shall be transferred to a less restrictive  
 23 hospital environment or whether the patient shall be conditionally released  
 24 or discharged. The patient shall have the right to present evidence at such  
 25 hearing and to cross-examine any witnesses called by the ~~district or county~~  
 26 attorney. At the conclusion of the hearing, if the court finds by clear and  
 27 convincing evidence that the patient will not be likely to cause harm to self  
 28 or others if transferred to a less restrictive hospital environment, the court  
 29 shall order the patient transferred. If the court finds by clear and  
 30 convincing evidence that the patient is not currently a mentally ill person,  
 31 the court shall order the patient discharged or conditionally released;  
 32 otherwise, the court shall order the patient to remain in the state security  
 33 hospital or state hospital where the patient is under commitment. If the  
 34 court orders the conditional release of the patient in accordance with  
 35 subsection ~~(4)~~ (d), the court may order as an additional condition to the  
 36 release that the patient continue to take prescribed medication and report  
 37 as directed to a person licensed to practice medicine and surgery to  
 38 determine whether or not the patient is taking the medication or that the  
 39 patient continue to receive periodic psychiatric or psychological treatment.  
 40 The ~~county or district~~ attorney shall notify any victims of the outcome of  
 41 the hearing.  
 42 ~~(4)~~(d) In order to ensure the safety and welfare of a patient who is to  
 43 be conditionally released and the citizenry of the state, the court may allow

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1 the patient to remain in custody at a facility under the supervision of the  
 2 secretary for aging and disability services or the head of the appropriate  
 3 secure facility for a period of time not to exceed 45 days in order to permit  
 4 sufficient time for the secretary to prepare recommendations to the court  
 5 for a suitable reentry program for the patient and allow adequate time for  
 6 the ~~county or district~~ attorney to provide victim notification. The reentry  
 7 program shall be specifically designed to facilitate the return of the patient  
 8 to the community as a functioning, self-supporting citizen, and may  
 9 include appropriate supportive provisions for assistance in establishing  
 10 residency, securing gainful employment, undergoing needed vocational  
 11 rehabilitation, receiving marital and family counseling, and such other  
 12 outpatient services that appear beneficial. If a patient who is to be  
 13 conditionally released will be residing in a county other than the county  
 14 where the district court that ordered the conditional release is located, the  
 15 court shall transfer venue of the case to the district court of the other  
 16 county and send a copy of all of the court's records of the proceedings to  
 17 the other court. In all cases of conditional release the court shall:

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18 (a)(1) Order that the patient be placed under the temporary  
 19 supervision of district court probation and parole services, community  
 20 treatment facility or any appropriate private agency; and  
 21 (b)(2) require as a condition precedent to the release that the patient  
 22 agree in writing to waive extradition in the event a warrant is issued  
 23 pursuant to K.S.A. 22-3428b, and amendments thereto.

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24 (5)(e) At any time during the conditional release period, a  
 25 conditionally released patient, through the patient's attorney, or the ~~county~~  
 26 ~~or district~~ attorney of the county in which the district court having venue is  
 27 located may file a motion for modification of the conditions of release, and  
 28 the court shall hold an evidentiary hearing on the motion within 14 days of  
 29 its filing. The court shall give notice of the time for the hearing to the  
 30 patient and the ~~county or district~~ attorney. If the court finds from the  
 31 evidence at the hearing that the conditional provisions of release should be  
 32 modified or vacated, it shall so order. If at any time during the transitional  
 33 period the designated medical officer or supervisory personnel of the  
 34 treatment facility informs the court that the patient is not satisfactorily  
 35 complying with the provisions of the conditional release, the court, after a  
 36 hearing for which notice has been given to the ~~county or district~~ attorney  
 37 and the patient, may make orders: (a) (1) For additional conditions of  
 38 release designed to effect the ends of the reentry program; (b) (2) requiring  
 39 the ~~county or district~~ attorney to file a petition to determine whether the  
 40 patient is a mentally ill person as provided in K.S.A. 59-2957, and  
 41 amendments thereto; or (c) (3) requiring that the patient be committed to  
 42 the appropriate secure facility, state security hospital or any state hospital.  
 43 In cases where a petition is ordered to be filed, the court shall proceed to



1 hear and determine the petition pursuant to the care and treatment act for  
 2 mentally ill persons and that act shall apply to all subsequent proceedings.  
 3 If a patient is committed to any state hospital pursuant to this act the  
 4 ~~county or district~~ attorney shall provide victim notification. The costs of all  
 5 proceedings, the mental evaluation and the reentry program authorized by  
 6 this section shall be paid by the county from which the person was  
 7 committed.

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

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

14 ~~(a)~~(1) "Likely to cause harm to self or others" means that the person  
 15 is likely, in the reasonably foreseeable future, to cause substantial physical  
 16 injury or physical abuse to self or others or substantial damage to another's  
 17 property, or evidenced by behavior causing, attempting or threatening such  
 18 injury, abuse or neglect.

19 ~~(b)~~(2) "Mentally ill person" means any person who:  
 20 (A) Is suffering from a severe mental disorder to the extent that such  
 21 person is in need of treatment; and

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

23 ~~(e)~~(3) "Treatment facility" means any mental health center or clinic,  
 24 psychiatric unit of a medical care facility, psychologist, physician or other  
 25 institution or individual authorized or licensed by law to provide either  
 26 inpatient or outpatient treatment to any patient.

27 Sec. 5. K.S.A. 2021 Supp. 22-3429 is hereby amended to read as  
 28 follows: 22-3429. After conviction and prior to sentence and as part of the  
 29 presentence investigation authorized by K.S.A. 2021 Supp. 21-6703, and  
 30 amendments thereto, or for crimes committed on or after July 1, 1993, a  
 31 presentence investigation report as provided in K.S.A. 2021 Supp. 21-  
 32 6813, and amendments thereto, the trial judge may order the defendant  
 33 committed to the state security hospital for mental examination, evaluation  
 34 and report. ~~If the defendant is convicted of a felony, the commitment shall~~  
 35 ~~be to the state security hospital or any suitable local mental health facility.~~  
 36 ~~If the defendant is convicted of a misdemeanor, the commitment shall be~~  
 37 ~~to a state hospital or any suitable local mental health facility. If adequate~~  
 38 ~~private facilities are available and if the defendant is willing to assume the~~  
 39 ~~expense thereof, commitment may be to a private hospital. A report of the~~  
 40 ~~examination and evaluation shall be furnished by the chief medical officer~~  
 41 ~~to the judge and shall be made available to the prosecuting county or~~  
 42 ~~district~~ attorney and counsel for the defendant. A defendant may not be  
 43 detained for more than 120 days under a commitment made under this

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K.S.A. 22-3301 and

- 1 section.
- 2 Sec. 6. K.S.A. 2021 Supp. 22-3302, 22-3303, 22-3305, 22-3428 and
- 3 22-3429 are hereby repealed.
- 4 Sec. 7. This act shall take effect and be in force from and after its
- 5 publication in the statute book.

Attachment

Section 1. K.S.A. 22-3301 is hereby amended to read as follows: 22-3301. ~~(1)~~ For the purpose of this article,:

(a) A person is "incompetent to stand trial" when ~~he~~ such person is charged with a crime and, because of mental illness or defect is unable:

~~(a)~~ (1) To understand the nature and purpose of the proceedings against ~~him~~ such person; or

~~(b)~~ (2) to make or assist in making ~~his~~ such person's defense.

~~(2)~~ (b) Whenever the words "competent," "competency," "incompetent" and "incompetency" are used without qualification in this article, they shall refer to the defendant's competency or incompetency to stand trial, as defined in subsection ~~(1)~~ of this section (a).

(c) "Appropriate state, county or private institution or facility" means a facility with sufficient resources, staffing and space to conduct the evaluation or restoration treatment of the defendant. "Appropriate state, county or private institution or facility" does not include a jail or correctional facility as a location where evaluation and restoration treatment services are provided unless the administrative head or law enforcement official in charge of the jail or correctional facility agrees that the facility has the appropriate physical and care capabilities that such services may be provided by:

(1) The state security hospital or its agent or a state hospital or its agent;

(2) a qualified mental health professional as defined in K.S.A. 59-2946, and amendments thereto, who is qualified by training and expertise to conduct competency restoration treatment;

(3) an individual who is qualified by training and experience to conduct competency evaluations and restoration treatment and is licensed by the behavioral sciences regulatory board; or

(4) a physician who is qualified by training and experience to conduct competency evaluations and restoration treatment and is licensed by the state board of healing arts.