

**HOUSE BILL No. 2607**

By Committee on Corrections and Juvenile Justice

2-7

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1 AN ACT concerning civil actions; relating to *{civil commitment pursuant*  
2 *to the Kansas sexually violent predator act; requiring notice of*  
3 *release of a person who may be a sexually violent predator to the*  
4 *attorney general and multidisciplinary team; time; providing for*  
5 *detention during proceedings; relating to}* habeas corpus; clarifying  
6 time limitations for filing; amending K.S.A. 2021 Supp. *{59-29a02, 59-*  
7 *29a03, 59-29a05 and}* 60-1507 and repealing the existing ~~section~~  
8 *{sections}*.  
9

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

11 *{Section 1. K.S.A. 2021 Supp. 59-29a02 is hereby amended to read*  
12 *as follows: 59-29a02. As used in this act:*

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

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

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

25 *(d) "Sexually motivated" means that one of the purposes for which*  
26 *the defendant committed the crime was for the purpose of the*  
27 *defendant's sexual gratification.*

28 *(e) "Sexually violent offense" means:*

29 *(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.*  
30 *2021 Supp. 21-5503, and amendments thereto;*

31 *(2) indecent liberties with a child, as defined in K.S.A. 21-3503,*  
32 *prior to its repeal, or K.S.A. 2021 Supp. 21-5506(a), and amendments*  
33 *thereto;*

34 *(3) aggravated indecent liberties with a child, as defined in K.S.A.*

1 *21-3504, prior to its repeal, or K.S.A. 2021 Supp. 21-5506(b), and*  
2 *amendments thereto;*

3 (4) *criminal sodomy, as defined in K.S.A. 21-3505(a)(2) and (a)(3),*  
4 *prior to its repeal, or K.S.A. 2021 Supp. 21-5504(a)(3) and (a)(4), and*  
5 *amendments thereto;*

6 (5) *aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior*  
7 *to its repeal, or K.S.A. 2021 Supp. 21-5504(b), and amendments thereto;*

8 (6) *indecent solicitation of a child, as defined in K.S.A. 21-3510,*  
9 *prior to its repeal, or K.S.A. 2021 Supp. 21-5508(a), and amendments*  
10 *thereto;*

11 (7) *aggravated indecent solicitation of a child, as defined in K.S.A.*  
12 *21-3511, prior to its repeal, or K.S.A. 2021 Supp. 21-5508(b), and*  
13 *amendments thereto;*

14 (8) *sexual exploitation of a child, as defined in K.S.A. 21-3516,*  
15 *prior to its repeal, or K.S.A. 2021 Supp. 21-5510, and amendments*  
16 *thereto;*

17 (9) *aggravated sexual battery, as defined in K.S.A. 21-3518, prior to*  
18 *its repeal, or K.S.A. 2021 Supp. 21-5505(b), and amendments thereto;*

19 (10) *aggravated incest, as defined in K.S.A. 21-3603, prior to its*  
20 *repeal, or K.S.A. 2021 Supp. 21-5604(b), and amendments thereto;*

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

26 (12) *an attempt, conspiracy or criminal solicitation, as defined in*  
27 *K.S.A. 21-3301, 21-3302 and 21-3303, prior to their repeal, or K.S.A.*  
28 *2021 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a*  
29 *sexually violent offense as defined in this subsection; or*

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

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

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

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

1       (i) *"Transitional release" means any halfway house, work release,*  
2 *sexually violent predator treatment facility or other placement designed*  
3 *to assist the person's adjustment and reintegration into the community.*

4       (j) *"Secretary" means the secretary for aging and disability*  
5 *services.*

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

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

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

17       Sec. 2. *K.S.A. 2021 Supp. 59-29a03 is hereby amended to read as*  
18 *follows: 59-29a03. (a) (1) Prior to July 1, 2023, when it appears that a*  
19 *person may meet the criteria of a sexually violent predator as defined in*  
20 *K.S.A. 59-29a02, and amendments thereto, the agency with jurisdiction*  
21 *shall give written notice of such to the attorney general and the*  
22 *multidisciplinary team established in subsection (f).* Such notice shall be  
23 given 90 days prior to the anticipated release of a person and includes,  
24 but is not limited to:

25       ~~(A)~~(A) *The anticipated release from total confinement of a person*  
26 *who has been convicted of a sexually violent offense, except that in the*  
27 *case of ~~persons who are~~ a person who is returned to prison for no more*  
28 *than 90 days as a result of revocation of postrelease supervision, written*  
29 *notice shall be given as soon as practicable following the person's*  
30 *readmission to prison;*

31       ~~(B)~~(B) *release of a person who has been charged with a sexually*  
32 *violent offense and who has been determined to be incompetent to stand*  
33 *trial pursuant to K.S.A. 22-3305, and amendments thereto;*

34       ~~(C)~~(C) *release of a person who has been found not guilty by reason*  
35 *of insanity of a sexually violent offense pursuant to K.S.A. 22-3428, and*  
36 *amendments thereto; or*

37       ~~(D)~~(D) *release of a person who has been found not guilty of a*  
38 *sexually violent offense pursuant to K.S.A. 22-3428, and amendments*  
39 *thereto, and the jury who returned the verdict of not guilty answers in*  
40 *the affirmative to the special question asked pursuant to K.S.A. 22-3221,*  
41 *and amendments thereto.*

42       (2) *On and after July 1, 2023, and prior to July 1, 2024, when it*  
43 *appears that a person may meet the criteria of a sexually violent predator*

1 as defined in K.S.A. 59-29a02, and amendments thereto, the agency with  
2 jurisdiction shall give written notice of such to the attorney general and  
3 the multidisciplinary team established in subsection (f). Such notice shall  
4 be given 90 days to two years prior to the anticipated release of a person  
5 and includes, but is not limited to:

6 (A) The anticipated release from total confinement of a person who  
7 has been convicted of a sexually violent offense, except that in the case of  
8 a person who is returned to prison for no more than 90 days as a result of  
9 revocation of postrelease supervision, written notice shall be given as  
10 soon as practicable following the person's readmission to prison;

11 (B) release of a person who has been charged with a sexually violent  
12 offense and who has been determined to be incompetent to stand trial  
13 pursuant to K.S.A. 22-3305, and amendments thereto;

14 (C) release of a person who has been found not guilty of a sexually  
15 violent offense pursuant to K.S.A. 22-3428, and amendments thereto; or

16 (D) release of a person who has been found not guilty of a sexually  
17 violent offense pursuant to K.S.A. 22-3428, and amendments thereto, and  
18 the jury who returned the verdict of not guilty answers in the affirmative to  
19 the special question asked pursuant to K.S.A. 22-3221, and amendments  
20 thereto.

21 (3) On and after July 1, 2024, when it appears that a person may  
22 meet the criteria of a sexually violent predator as defined in K.S.A. 59-  
23 29a02, and amendments thereto, the agency with jurisdiction shall give  
24 written notice of such to the attorney general and the multidisciplinary  
25 team established in subsection (f). Such notice shall be given two years  
26 prior to the anticipated release of a person and includes, but is not limited  
27 to:

28 (A) The anticipated release from total confinement of a person who  
29 has been convicted of a sexually violent offense, except that in the case of  
30 a person who is returned to prison for no more than 90 days as a result of  
31 revocation of postrelease supervision, written notice shall be given as  
32 soon as practicable following the person's readmission to prison;

33 (B) release of a person who has been charged with a sexually violent  
34 offense and who has been determined to be incompetent to stand trial  
35 pursuant to K.S.A. 22-3305, and amendments thereto;

36 (C) release of a person who has been found not guilty of a sexually  
37 violent offense pursuant to K.S.A. 22-3428, and amendments thereto; or

38 (D) release of a person who has been found not guilty of a sexually  
39 violent offense pursuant to K.S.A. 22-3428, and amendments thereto, and  
40 the jury who returned the verdict of not guilty answers in the affirmative to  
41 the special question asked pursuant to K.S.A. 22-3221, and amendments  
42 thereto.

43 (b) **The agency with jurisdiction shall inform the attorney general**

1 *and the multidisciplinary team established in subsection (f) of the*  
2 *following:*

3 *(1) The person's name, identifying factors, anticipated future*  
4 *residence and offense history; and*

5 *(2) documentation of institutional adjustment and any treatment*  
6 *received.*

7 *(c) Any reports of evaluations prepared or provided pursuant to*  
8 *subsection (b) shall demonstrate that the person evaluated was informed*  
9 *of the following:*

10 *(1) The nature and purpose of the evaluation; and*

11 *(2) that the evaluation will not be confidential and that any*  
12 *statements made by the person and any conclusions drawn by the*  
13 *evaluator may be disclosed to a court, the detained person's attorney, the*  
14 *prosecutor and the trier of fact at any proceeding conducted under the*  
15 *Kansas sexually violent predator act.*

16 *(d) The permitted disclosures required to be submitted to the*  
17 *attorney general under this section shall be deemed to be in response to*  
18 *the attorney general's civil demand for relevant and material*  
19 *information to investigate whether a petition shall be filed. The*  
20 *information provided shall be specific to the purposes of the Kansas*  
21 *sexually violent predator act and as limited in scope as reasonably*  
22 *practicable.*

23 *(e) The agency with jurisdiction, its employees, officials, members*  
24 *of the multidisciplinary team established in subsection (f), members of*  
25 *the prosecutor's review committee appointed as provided in subsection*  
26 *(g) and individuals contracting, appointed or volunteering to perform*  
27 *services hereunder shall be immune from liability for any good-faith*  
28 *conduct under this section.*

29 *(f) The secretary of corrections shall establish a multidisciplinary*  
30 *team which may include individuals from other state agencies to review*  
31 *available records of each person referred to such team pursuant to*  
32 *subsection (a). The team shall include the mental health professional*  
33 *who prepared any evaluation, interviewed the person or made any*  
34 *recommendation to the attorney general. The team shall assess whether*  
35 *or not the person meets the definition of a sexually violent predator, as*  
36 *established in K.S.A. 59-29a02, and amendments thereto. The team shall*  
37 *notify the attorney general of its assessment.*

38 *(g) The attorney general shall appoint a prosecutor's review*  
39 *committee to review the records of each person referred to the attorney*  
40 *general pursuant to subsection (a). The prosecutor's review committee*  
41 *shall assist the attorney general in the determination of whether or not*  
42 *the person meets the definition of a sexually violent predator. The*  
43 *assessment of the multidisciplinary team shall be made available to the*

1 *attorney general and the prosecutor's review committee.*

2 *(h) The provisions of this section are not jurisdictional and failure*  
3 *to comply with such provisions not affecting constitutional rights in no*  
4 *way prevents the attorney general from proceeding against a person*  
5 *otherwise subject to the provisions of the Kansas sexually violent*  
6 *predator act.*

7 *Sec. 3. K.S.A. 2021 Supp. 59-29a05 is hereby amended to read as*  
8 *follows: 59-29a05. (a) Upon filing of a petition under K.S.A. 59-29a04,*  
9 *and amendments thereto, the—judge court shall determine whether*  
10 *probable cause exists to believe that the person named in the petition is a*  
11 *sexually violent predator. If such determination is made, the—judge court*  
12 *shall:*

13 *(1) Direct that the person be taken into custody and detained in the*  
14 *county jail until such time as a determination is made that the person is*  
15 *a sexually violent predator subject to commitment under the Kansas*  
16 *sexually violent predator act, unless the person is subject to secure*  
17 *confinement at a correctional facility operated by the secretary of*  
18 *corrections. When the person is no longer subject to secure confinement at*  
19 *a correctional facility operated by the secretary of corrections, the court*  
20 *shall direct that the sheriff of the county where the petition is filed, or the*  
21 *sheriff's lawful designee, transport the person to the county jail and detain*  
22 *the person in the county jail until such time as a determination is made*  
23 *that the person is a sexually violent predator subject to commitment under*  
24 *the Kansas sexually violent predator act; and*

25 *(2) file a protective order permitting disclosures of protected health*  
26 *information to the parties, their counsel, evaluators, experts and others*  
27 *necessary to the litigation during the course of the proceedings subject*  
28 *to the Kansas sexually violent predator act.*

29 *(b) ~~Within 72 hours after a person is taken into custody pursuant to~~*  
30 *~~subsection (a), or~~ As soon as reasonably practicable or agreed upon by*  
31 *the parties, such person shall after the filing of a petition under K.S.A. 59-*  
32 *29a04, and amendments thereto, the court shall order that the person*  
33 *named in the petition be provided with notice of, and an opportunity to*  
34 *appear in person at, a hearing to contest probable cause as to whether*  
35 *the—detained person is a sexually violent predator. At this hearing the*  
36 *court shall:*

37 *(1) Verify the—detainer's person's identity; and*

38 *(2) determine whether probable cause exists to believe that the*  
39 *person is a sexually violent predator. The state may rely upon the*  
40 *petition and supplement the petition with additional documentary*  
41 *evidence or live testimony.*

42 *(c) At the probable cause hearing as provided in subsection (b), the*  
43 *detained person shall have the following rights in addition to the rights*

1 *previously specified:*

2 (1) *To be represented by counsel;*

3 (2) *to present evidence on such person's behalf;*

4 (3) *to cross-examine witnesses who testify against such person; and*

5 (4) *to view and copy all petitions and reports in the court file.*

6 (d) *If the probable cause determination is made, the court shall*  
7 *order that the person be transferred to an appropriate secure facility,*  
8 *including, but not limited to, a county jail, for an evaluation as to*  
9 *whether the person is a sexually violent predator. The evaluation*  
10 *ordered by the court shall be conducted by a person deemed to be*  
11 *professionally qualified to conduct such an examination.*

12 (e) *The person conducting the evaluation ordered by the court*  
13 *pursuant to this section shall notify the ~~detained~~ person being evaluated*  
14 *of the following:*

15 (1) *The nature and purpose of the evaluation; and*

16 (2) *that the evaluation will not be confidential and that any*  
17 *statements made by the ~~detained~~ person and any conclusions drawn by*  
18 *the evaluator, will be disclosed to the court, the ~~detained~~ person's*  
19 *attorney, the prosecutor and the trier of fact at any proceeding*  
20 *conducted under the Kansas sexually violent predator act.*

21 (f) *When a proceeding under the Kansas sexually violent predator act*  
22 *is required to be conducted by the court and the person involved in the*  
23 *proceeding remains subject to secure confinement at a correctional facility*  
24 *operated by the secretary of corrections, the court may secure the person's*  
25 *attendance at the proceeding by directing the sheriff of the county where*  
26 *the proceeding will be held, or the sheriff's lawful designee, to take the*  
27 *person into the sheriff's physical custody. The sheriff may detain such*  
28 *person in the county jail for such time deemed reasonable by the sheriff*  
29 *and the secretary of corrections to secure the person's attendance at the*  
30 *proceeding.*

31 (g) *Nothing in this section shall be construed to give a person:*

32 (1) *The right to appear at a proceeding under the Kansas sexually*  
33 *violent predator act absent a court order; or*

34 (2) *any right whatsoever in the amount of time the person is detained*  
35 *in the county jail to secure the person's attendance at a proceeding under*  
36 *the Kansas sexually violent predator act.*

37 Section 1. **{Sec. 4.}** K.S.A. 2021 Supp. 60-1507 is hereby amended to  
38 read as follows: 60-1507. (a) *Motion attacking sentence.* A prisoner in  
39 custody under sentence of a court of general jurisdiction claiming the right  
40 to be released upon the ground that the sentence was imposed in violation  
41 of the constitution or laws of the United States, or the constitution or laws  
42 of the state of Kansas, or that the court was without jurisdiction to impose  
43 such sentence, or that the sentence was in excess of the maximum

1 authorized by law, or is otherwise subject to collateral attack, may,  
2 pursuant to the time limitations imposed by subsection (f), move the court  
3 which imposed the sentence to vacate, set aside or correct the sentence.

4 (b) *Hearing and judgment.* Unless the motion and the files and  
5 records of the case conclusively show that the prisoner is entitled to no  
6 relief, the court shall cause notice thereof to be served upon the county  
7 attorney, grant a prompt hearing thereon, determine the issues and make  
8 findings of fact and conclusions of law with respect thereto. The court may  
9 entertain and determine such motion without requiring the production of  
10 the prisoner at the hearing. If the court finds that the judgment was  
11 rendered without jurisdiction, or that the sentence imposed was not  
12 authorized by law or is otherwise open to collateral attack, or that there has  
13 been such a denial or infringement of the constitutional rights of the  
14 prisoner as to render the judgment vulnerable to collateral attack, the court  
15 shall vacate and set the judgment aside and shall discharge the prisoner or  
16 resentence said prisoner or grant a new trial or correct the sentence as may  
17 appear appropriate.

18 (c) *Successive motions.* The sentencing court shall not be required to  
19 entertain a second or successive motion for similar relief on behalf of the  
20 same prisoner.

21 (d) *Appeal.* An appeal may be taken to the appellate court as provided  
22 by law from the order entered on the motion as from a final judgment on  
23 application for a writ of habeas corpus.

24 (e) *Exclusiveness of remedy.* An application for a writ of habeas  
25 corpus in behalf of a prisoner who is authorized to apply for relief by  
26 motion pursuant to this section, shall not be entertained if it appears that  
27 the applicant has failed to apply for relief, by motion, to the court which  
28 sentenced said applicant, or that such court has denied said applicant relief,  
29 unless it also appears that the remedy by motion is inadequate or  
30 ineffective to test the legality of said applicant's detention.

31 (f) *Time limitations.* (1) Any action under this section must be  
32 brought within one year of:

33 (A) The final order of the last appellate court in this state to exercise  
34 jurisdiction on a direct appeal or the termination of such appellate  
35 jurisdiction;~~or~~

36 (B) the denial of a petition for writ of certiorari to the United States  
37 supreme court or issuance of such court's final order following granting  
38 such petition; *or*

39 (C) *the decision of the district court denying a prior motion under*  
40 *this section, the opinion of the last appellate court in this state to exercise*  
41 *jurisdiction on such prior motion or the denial of the petition for review on*  
42 *such prior motion, whichever is later.*

43 (2) The time limitation herein may be extended by the court only to



1 prevent a manifest injustice.

2 (A) For purposes of finding manifest injustice under this section, the  
3 court's inquiry shall be limited to determining why the prisoner failed to  
4 file the motion within the one-year time limitation or whether the prisoner  
5 makes a colorable claim of actual innocence. As used herein, the term  
6 actual innocence requires the prisoner to show it is more likely than not  
7 that no reasonable juror would have convicted the prisoner in light of new  
8 evidence.

9 (B) If the court makes a manifest-injustice finding, it must state the  
10 factual and legal basis for such finding in writing with service to the  
11 parties.

12 (3) If the court, upon its own inspection of the motions, files and  
13 records of the case, determines the time limitations under this section have  
14 been exceeded and that the dismissal of the motion would not equate with  
15 manifest injustice, the district court must dismiss the motion as untimely  
16 filed.

17 **(g) The amendments made to subsection (f) by this act shall not**  
18 **bar actions under this section that are brought within one year of the**  
19 **effective date of this act.**

20 Sec. ~~2~~ {5.} K.S.A. 2021 Supp. {59-29a02, 59-29a03, 59-29a05 and}  
21 60-1507 ~~is~~ {are} hereby repealed.

22 Sec. ~~3~~ {6.} This act shall take effect and be in force from and after its  
23 publication in the ~~statute book~~ Kansas register {statute book}.