

As Amended by House Committee

Session of 2022

HOUSE BILL No. 2697

By Committee on Judiciary

2-11

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to competency to stand trial; mobile competency evaluations; amending
3 **K.S.A. 22-3301 and K.S.A. 2021 Supp. 22-3302, 22-3303, 22-3305,**
4 **22-3428 and 22-3429 and repealing the existing sections.**

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 **Section 1. K.S.A. 22-3301 is hereby amended to read as follows:**
8 **22-3301.-(1) For the purpose of this article;**

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

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

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

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

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

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

31 (2) *a qualified mental health professional as defined in K.S.A. 59-*
32 *2946, and amendments thereto, who is qualified by training and expertise*
33 *to conduct competency restoration treatment;*

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

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

4 ~~Section 1.~~ **Sec. 2.** K.S.A. 2021 Supp. 22-3302 is hereby amended to
 5 read as follows: 22-3302. ~~(1)(a)~~ At any time after the defendant has been
 6 charged with a crime and before pronouncement of sentence, the
 7 defendant, the defendant's counsel or the ~~prosecuting county or district~~
 8 **prosecuting** attorney may request a determination of the defendant's
 9 competency to stand trial. If, upon the request of either party or upon the
 10 judge's own knowledge and observation, the judge before whom the case
 11 is pending finds that there is reason to believe that the defendant is
 12 incompetent to stand trial, the proceedings shall be suspended and a
 13 hearing conducted to determine the competency of the defendant.

14 ~~(2)(b)~~ If the defendant is charged with a felony, the hearing to
 15 determine the competency of the defendant shall be conducted by a district
 16 judge.

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

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

32 ~~(b)(B)~~ designate ~~any~~ **an** appropriate ~~psychiatric or psychological~~
 33 ~~clinic, mental health center or other psychiatric or psychological~~ **state,**
 34 **county or private institution or** facility to conduct the examination while
 35 the defendant is in jail, *at any secure location* or on pretrial release; or

36 ~~(c)(C)~~ appoint ~~two a-qualified~~ licensed ~~physicians~~ **physician who is**
 37 **qualified through training or experience** or a licensed ~~psychologists, or~~
 38 ~~one of each,~~ *psychologist* to examine the defendant and report to the court.

39 ~~(B)(2)~~ If the court ~~commits~~ *orders* the defendant *committed* to an
 40 institution or facility for the examination, the commitment shall be for a
 41 period not to exceed 60 days *from the date of admission* or until the
 42 examination is completed, whichever is the shorter period of time. No
 43 statement made by the defendant in the course of any examination

1 provided for by this section, whether or not the defendant consents to the
2 examination, shall be admitted in evidence against the defendant in any
3 criminal proceeding.

4 ~~(3)~~ *Before the expiration of the 60-day evaluation period, the*
5 *professional approved by the court to examine the defendant or, if the*
6 *defendant is committed for inpatient examination, the chief medical officer*
7 *or head of the appropriate **institution or** facility shall certify to the court*
8 *whether the defendant is competent to stand trial.*

9 (4) Upon notification of the court that a defendant committed for
10 psychiatric or psychological examination under this subsection has been
11 found competent to stand trial, the court shall order that the defendant be
12 returned no later than seven days after receipt of the notice for proceedings
13 under this section. If the defendant is not returned within that time, the
14 county in which the proceedings will be held shall pay the costs of
15 maintaining the defendant at the institution or facility for the period of
16 time the defendant remains at the institution or facility in excess of the
17 seven-day period.

18 ~~(4)~~(d) If the defendant is found to be competent, the proceedings
19 which have been suspended shall be resumed. If the proceedings were
20 suspended before or during the preliminary examination, the judge who
21 conducted the competency hearing may conduct a preliminary
22 examination or, if a district magistrate judge was conducting the
23 proceedings prior to the competency hearing, the judge who conducted the
24 competency hearing may order the preliminary examination to be heard by
25 a district magistrate judge.

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

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

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

34 Sec. ~~2~~. 3. K.S.A. 2021 Supp. 22-3303 is hereby amended to read as
35 follows: 22-3303. (a) (1) A defendant who is charged with a crime and is
36 found to be incompetent to stand trial shall be ~~committed~~ *ordered* for
37 evaluation and treatment ~~to any, conducted on an outpatient or inpatient~~
38 ~~basis, by the state security hospital or its agent, a state hospital or its~~
39 ~~agent or any~~ *an* appropriate state, county, *or* private institution or facility.
40 ~~At the time of such commitment the institution of commitment shall notify~~
41 ~~the county or district attorney of the county in which the criminal~~
42 ~~proceedings are pending for the purpose of providing victim notification.~~
43 ~~Any such commitment shall be for a period not to exceed 90 days. Within~~

1 90 days after the defendant's commitment to such institution, the chief
2 medical officer of such institution shall **Evaluation or restorative**
3 **treatment of a defendant shall not be conducted in a jail unless the**
4 **administrative head or law enforcement official in charge of the jail**
5 **agrees to such evaluation or restorative treatment being conducted in**
6 **such jail.**

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

11 (3) *For a defendant charged with a misdemeanor offense, outpatient*
12 *evaluation and treatment shall **may** be ordered to be conducted by ~~any an~~ **an***
13 *appropriate ~~psychiatric or psychological clinic or facility, mental health~~*
14 *center, county institution or facility or a private **state, county or private***
15 *institution or facility.*

16 (4) *For a defendant charged with a felony offense, outpatient*
17 *evaluation and treatment may be ordered to be conducted by ~~any an~~ **an***
18 *appropriate ~~psychiatric or psychological clinic or facility, mental health~~*
19 *center, county institution or facility, **state, county or private** institution or*
20 *facility or other appropriate secure facility.*

21 (5) *For a defendant charged with a felony offense, a commitment to*
22 *the state security hospital or its agent or a state hospital or its agent may*
23 *by conducted on an inpatient basis or, if the defendant meets the screening*
24 *criteria established by the state security hospital, on an outpatient basis.*

25 (6) *At the commencement of outpatient treatment, the institution or*
26 *facility conducting the treatment shall notify the ~~county or district~~*
27 ***prosecuting** attorney in the county where the criminal proceeding is*
28 *pending for the purpose of providing victim notification.*

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

40 (2) *If such probability does exist, the court shall order the defendant*
41 *to remain in jail or at a secure location, on pretrial release pursuant to*
42 *K.S.A. 22-2802, and amendments thereto, or at an appropriate ~~state,~~*
43 *county, ~~private institution or facility~~ setting until the defendant attains*

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

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

42 ~~(3)(4)~~ When reasonable grounds exist to believe that a defendant who
43 has been adjudged incompetent to stand trial is competent, the court in

1 which the criminal case is pending shall conduct a hearing in accordance
2 with K.S.A. 22-3302, and amendments thereto, to determine the person's
3 present mental condition. Such court shall give reasonable notice of such
4 hearings to the ~~prosecuting county or district~~ **prosecuting** attorney, the
5 defendant and the defendant's attorney of record, if any. The ~~prosecuting~~
6 ~~county or district~~ **prosecuting** attorney shall provide victim notification. If
7 the court, following such hearing, finds the defendant to be competent, the
8 proceedings pending against the defendant shall be resumed.

9 ~~(4)~~(5) A defendant committed to a public institution **or facility** under
10 the provisions of this section who is thereafter sentenced for the crime
11 charged at the time of commitment ~~may~~ **shall** be credited with all ~~or any~~
12 ~~part~~ of the time during which the defendant was committed and confined
13 in such public institution **or facility**.

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

21 *(2) If such probability does exist, the court shall order the defendant*
22 *to remain in jail or at a secure location, on pretrial release pursuant to*
23 *K.S.A. 22-2802, and amendments thereto, or at an appropriate setting*
24 *until the defendant attains competency to stand trial or for a period of six*
25 *months from the date of the commencement of outpatient treatment,*
26 *whichever occurs first. If such probability does not exist, the court shall*
27 *order the ~~county or district~~ **prosecuting** attorney where the charges are*
28 *filed or the secretary for aging and disability services to commence*
29 *involuntary commitment proceedings pursuant to article 29 of chapter 59*
30 *of the Kansas Statutes Annotated, and amendments thereto. ~~The court~~*
31 *~~shall issue an order for care and treatment,~~ within 21 days of receipt of the*
32 *certification from the chief medical officer of the institution or the head of*
33 *the facility unless exceptional circumstances warrant delay. When a*
34 *defendant is charged with any off-grid felony, any nondrug severity level 1*
35 *through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-*
36 *3603 or 21-3719, prior to their repeal, or K.S.A. 2021 Supp. 21-5505(b),*
37 *21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments*
38 *thereto, and commitment proceedings have commenced, for such*
39 *proceeding, "mentally ill person subject to involuntary commitment for*
40 *care and treatment" means a mentally ill person, as defined in K.S.A. 59-*
41 *2946(e), and amendments thereto, who is likely to cause harm to self and*
42 *others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The*
43 *other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not*

1 apply.

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

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

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

39 (d) (1) If the defendant is ordered or met criteria to receive an
40 evaluation and treatment on an outpatient basis and the chief medical
41 officer of the ~~state security hospital or a state hospital or the head of any~~
42 ~~appropriate psychiatric or psychological clinic, mental health center or~~
43 **appropriate state, county or private institution or facility** determines that

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

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

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

35 (2) *If such probability does exist, the court shall order the defendant*
36 *to remain in jail or at a secure location, on pretrial release pursuant to*
37 *K.S.A. 22-2802, and amendments thereto, or at an appropriate setting*
38 *until the defendant attains competency to stand trial or for a period of six*
39 *months from the date of the commencement of inpatient treatment,*
40 *whichever occurs first. If such probability does not exist, the court shall*
41 *order the ~~county or district~~ **prosecuting** attorney where the charges are*
42 *filed or the secretary for aging and disability services to commence*
43 *involuntary commitment proceedings pursuant to article 29 of chapter 59*

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

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

38 (4) When reasonable grounds exist to believe that a defendant who
39 has been adjudged incompetent to stand trial is competent, the court in
40 which the criminal case is pending shall conduct a hearing in accordance
41 with K.S.A. 22-3302, and amendments thereto, to determine the person's
42 present mental condition. Such court shall give reasonable notice of such
43 hearings to the ~~county or district~~ **prosecuting** attorney, the defendant and

1 *the defendant's attorney of record, if any. The ~~county or district~~*
2 **prosecuting** attorney shall provide victim notification. If the court,
3 following such hearing, finds the defendant to be competent, the
4 proceedings pending against the defendant shall be resumed.

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

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

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

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

1 *be discontinued until the conclusion of the hearing unless the court finds*
 2 *that such medication or other treatment is necessary to sustain the*
 3 *defendant's life or to protect the defendant or others. If the court makes*
 4 *such a finding, the court shall order the hearing to proceed.*

5 ~~(4) When a defendant who is receiving treatment pursuant to this~~
 6 ~~section objects to taking any medication prescribed for psychiatric~~
 7 ~~treatment, and if the defendant continues to object after full explanation of~~
 8 ~~the benefits and risks of such medication, the medication may be~~
 9 ~~administered over the defendant's objection. **If a defendant who is**~~
 10 **charged with a felony is receiving treatment pursuant to this section**
 11 **and is not deemed a present danger to self or others objects to taking**
 12 **any medication prescribed for the purpose of restoring the defendant**
 13 **to competency, the defendant's objection shall be recorded in the**
 14 **defendant's medical record and written notice of such objection shall be**
 15 **forwarded to the medical director of the treatment institution or facility**
 16 **or the director's designee and to the court where the criminal charges**
 17 **are pending. Within five days after receiving such notice, excluding**
 18 ~~Saturdays, Sundays and legal holidays, the medical director or such~~
 19 ~~director's designee shall issue a written decision concerning the~~
 20 ~~administration of such medication, and a copy of such decision shall be~~
 21 ~~placed in the defendant's medical record. **The medication may be**~~
 22 **administered over the defendant's objection only if the court finds**
 23 **that:**

24 **(A) The medication is substantially unlikely to have side effects**
 25 **that may undermine the fairness of the trial;**

26 **(B) the medication is medically appropriate;**

27 **(C) less intrusive alternatives have been considered;**

28 **(D) the medication is necessary to advance significantly**
 29 **important governmental trial interests; and**

30 **(E) the administrative head or law enforcement official in charge**
 31 **of the jail has agreed to having the medication administered over the**
 32 **defendant's objection in the jail.**

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

35 ~~Sec. 3. 4. K.S.A. 2021 Supp. 22-3305 is hereby amended to read as~~
 36 ~~follows: 22-3305. (4)(a) Whenever involuntary commitment proceedings~~
 37 ~~have been commenced by the secretary for aging and disability services or~~
 38 ~~the county or district prosecuting attorney as required by K.S.A. 22-3303,~~
 39 ~~and amendments thereto, and the defendant is not committed to a~~
 40 ~~treatment institution or facility as a patient, the defendant shall remain in~~
 41 ~~the institution or facility where committed pursuant to K.S.A. 22-3303,~~
 42 ~~and amendments thereto. The secretary for aging and disability services or~~
 43 ~~the county or district prosecuting attorney shall promptly notify the court~~

1 and the ~~county or district~~ **prosecuting** attorney of the county in which the
2 criminal proceedings are pending for the purpose of providing victim
3 notification, of the result of the involuntary commitment proceeding.

4 ~~(2)(b)~~ Whenever involuntary commitment proceedings have been
5 commenced by the secretary for aging and disability services *or the* ~~county~~
6 *or* ~~district~~ **prosecuting attorney** as required by K.S.A. 22-3303, and
7 amendments thereto, and the defendant is committed to a treatment
8 **institution or facility** as a patient but thereafter is to be discharged
9 pursuant to the care and treatment act for mentally ill persons, the
10 defendant shall remain in the **institution or facility** where committed
11 pursuant to K.S.A. 22-3303, and amendments thereto, and the head of the
12 treatment **institution or facility** shall promptly notify the court and the
13 ~~county or district~~ **prosecuting attorney** of the county in which the criminal
14 proceedings are pending for the purpose of providing victim notification,
15 that the defendant is to be discharged.

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

38 Sec. ~~4~~ 5. K.S.A. 2021 Supp. 22-3428 is hereby amended to read as
39 follows: 22-3428. ~~(1)~~-(a) (1) When a defendant is acquitted and the jury
40 answers in the affirmative to the special question asked pursuant to K.S.A.
41 22-3221, and amendments thereto, the defendant shall be committed to the
42 state security hospital *or an appropriate secure facility* for safekeeping and
43 treatment and the ~~county or district~~ **prosecuting attorney** shall provide

1 victim notification. A finding of not guilty and the jury answering in the
 2 affirmative to the special question asked pursuant to K.S.A. 22-3221, and
 3 amendments thereto, shall be prima facie evidence that the acquitted
 4 defendant is presently likely to cause harm to self or others.

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

13 ~~(e)~~(3) The court shall give notice of the hearing to the chief medical
 14 officer of the state security hospital *or licensed psychologist at the*
 15 *appropriate secure facility*, the ~~district or county~~ **prosecuting** attorney, the
 16 defendant and the defendant's attorney. The ~~county or district~~ **prosecuting**
 17 attorney shall provide victim notification. The court shall inform the
 18 defendant that such defendant is entitled to counsel and that counsel will
 19 be appointed to represent the defendant if the defendant is not financially
 20 able to employ an attorney as provided in K.S.A. 22-4503 et seq., and
 21 amendments thereto. The defendant shall remain at the state security
 22 hospital pending the hearing.

23 ~~(d)~~(4) At the hearing, the defendant shall have the right to present
 24 evidence and cross-examine witnesses. At the conclusion of the hearing, if
 25 the court finds by clear and convincing evidence that the defendant is not
 26 currently a mentally ill person, the court shall dismiss the criminal
 27 proceeding and discharge the defendant, otherwise the court may commit
 28 the defendant to the state security hospital *or an appropriate secure*
 29 *facility* for treatment or may place the defendant on conditional release
 30 pursuant to subsection ~~(4)~~ (d). The ~~county or district~~ **prosecuting** attorney
 31 shall provide victim notification regarding the outcome of the hearing.

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

33 ~~(a)~~(1) Whenever it appears to the chief medical officer of the state
 34 security hospital *or a licensed psychologist at the appropriate secure*
 35 *facility* that a person committed under subsection ~~(1)(d)~~ (a)(4) is not likely
 36 to cause harm to other persons in a less restrictive hospital environment,
 37 the officer may transfer the person to any state hospital, subject to the
 38 provisions of subsection ~~(3)~~ (c). At any time subsequent thereto during
 39 which such person is still committed to a state hospital, if the chief
 40 medical officer of that hospital *or the licensed psychologist at the*
 41 *appropriate secure facility* finds that the person may be likely to cause
 42 harm or has caused harm, to others, such officer may transfer the person
 43 back to the state security hospital.

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

3 ~~(3)(c)~~ Before transfer of a person from the state security hospital *or*
4 *appropriate secure facility* pursuant to subsection ~~(2)(a)~~ *(b)(1)* or
5 conditional release or discharge of a person pursuant to subsection ~~(2)(b)~~
6 *(b)(2)*, the chief medical officer of the state security hospital or the state
7 hospital where the patient is under commitment *or the licensed*
8 *psychologist at the appropriate secure facility* shall give notice to the
9 district court of the county from which the person was committed that
10 transfer of the patient is proposed or that the patient is ready for proposed
11 conditional release or discharge. Such notice shall include, but not be
12 limited to: ~~(a)~~ *(1)* Identification of the patient; ~~(b)~~ *(2)* the course of
13 treatment; ~~(c)~~ *(3)* a current assessment of the defendant's mental illness; ~~(d)~~
14 *(4)* recommendations for future treatment, if any; and ~~(e)~~ *(5)*
15 recommendations regarding conditional release or discharge, if any. Upon
16 receiving notice, the district court shall order that a hearing be held on the
17 proposed transfer, conditional release or discharge. The court shall give
18 notice of the hearing to the *appropriate secure facility*, state hospital or
19 state security hospital where the patient is under commitment, to the
20 ~~district or county~~ **prosecuting** attorney of the county from which the
21 person was originally ordered committed. ~~The county or district~~
22 **prosecuting** attorney shall provide victim notification regarding the
23 hearing. The court shall order the involuntary patient to undergo a mental
24 evaluation by a person designated by the court. A copy of all orders of the
25 court shall be sent to the involuntary patient and the patient's attorney. The
26 report of the court ordered mental evaluation shall be given to the ~~district~~
27 ~~or county~~ **prosecuting** attorney, the involuntary patient and the patient's
28 attorney at least seven days prior to the hearing. The hearing shall be held
29 within 30 days after the receipt by the court of the chief medical officer's
30 notice *unless the court finds that exceptional circumstances warrant delay*
31 *of the hearing*. The involuntary patient shall remain in the *appropriate*
32 *secure facility*, state hospital or state security hospital where the patient is
33 under commitment until the hearing on the proposed transfer, conditional
34 release or discharge is to be held. At the hearing, the court shall receive all
35 relevant evidence, including the written findings and recommendations of
36 the chief medical officer of the state security hospital or the state hospital
37 *or the licensed psychologist of the appropriate secure facility* where the
38 patient is under commitment, and shall determine whether the patient shall
39 be transferred to a less restrictive hospital environment or whether the
40 patient shall be conditionally released or discharged. The patient shall have
41 the right to present evidence at such hearing and to cross-examine any
42 witnesses called by the ~~district or county~~ **prosecuting** attorney. At the
43 conclusion of the hearing, if the court finds by clear and convincing

1 evidence that the patient will not be likely to cause harm to self or others if
2 transferred to a less restrictive hospital environment, the court shall order
3 the patient transferred. If the court finds by clear and convincing evidence
4 that the patient is not currently a mentally ill person, the court shall order
5 the patient discharged or conditionally released; otherwise, the court shall
6 order the patient to remain in the state security hospital or state hospital
7 where the patient is under commitment. If the court orders the conditional
8 release of the patient in accordance with subsection ~~(4)~~ (d), the court may
9 order as an additional condition to the release that the patient continue to
10 take prescribed medication and report as directed to a person licensed to
11 practice medicine and surgery to determine whether or not the patient is
12 taking the medication or that the patient continue to receive periodic
13 psychiatric or psychological treatment. ~~The county or district~~ **prosecuting**
14 attorney shall notify any victims of the outcome of the hearing.

15 ~~(4)~~(d) In order to ensure the safety and welfare of a patient who is to
16 be conditionally released and the citizenry of the state, the court may allow
17 the patient to remain in custody at a facility under the supervision of the
18 secretary for aging and disability services *or the head of the appropriate*
19 *secure facility* for a period of time not to exceed 45 days in order to permit
20 sufficient time for the secretary to prepare recommendations to the court
21 for a suitable reentry program for the patient and allow adequate time for
22 ~~the county or district~~ **prosecuting** attorney to provide victim notification.
23 The reentry program shall be specifically designed to facilitate the return
24 of the patient to the community as a functioning, self-supporting citizen,
25 and may include appropriate supportive provisions for assistance in
26 establishing residency, securing gainful employment, undergoing needed
27 vocational rehabilitation, receiving marital and family counseling, and
28 such other outpatient services that appear beneficial. If a patient who is to
29 be conditionally released will be residing in a county other than the county
30 where the district court that ordered the conditional release is located, the
31 court shall transfer venue of the case to the district court of the other
32 county and send a copy of all of the court's records of the proceedings to
33 the other court. In all cases of conditional release the court shall:

34 ~~(a)~~(1) Order that the patient be placed under the temporary
35 supervision of district court probation and parole services, community
36 treatment facility or any appropriate private agency; and

37 ~~(b)~~(2) require as a condition precedent to the release that the patient
38 agree in writing to waive extradition in the event a warrant is issued
39 pursuant to K.S.A. 22-3428b, and amendments thereto.

40 ~~(5)~~(e) At any time during the conditional release period, a
41 conditionally released patient, through the patient's attorney, or ~~the county~~
42 ~~or district~~ **prosecuting** attorney of the county in which the district court
43 having venue is located may file a motion for modification of the

1 conditions of release, and the court shall hold an evidentiary hearing on the
 2 motion within 14 days of its filing. The court shall give notice of the time
 3 for the hearing to the patient and the ~~county or district~~ **prosecuting**
 4 attorney. If the court finds from the evidence at the hearing that the
 5 conditional provisions of release should be modified or vacated, it shall so
 6 order. If at any time during the transitional period the designated medical
 7 officer or supervisory personnel or the treatment facility informs the court
 8 that the patient is not satisfactorily complying with the provisions of the
 9 conditional release, the court, after a hearing for which notice has been
 10 given to the ~~county or district~~ **prosecuting** attorney and the patient, may
 11 make orders: ~~(a)~~ (1) For additional conditions of release designed to effect
 12 the ends of the reentry program; ~~(b)~~ (2) requiring the ~~county or district~~
 13 **prosecuting** attorney to file a petition to determine whether the patient is a
 14 mentally ill person as provided in K.S.A. 59-2957, and amendments
 15 thereto; or ~~(c)~~ (3) requiring that the patient be committed to the
 16 *appropriate secure facility*, state security hospital or any state hospital. In
 17 cases where a petition is ordered to be filed, the court shall proceed to hear
 18 and determine the petition pursuant to the care and treatment act for
 19 mentally ill persons and that act shall apply to all subsequent proceedings.
 20 If a patient is committed to any state hospital pursuant to this act the
 21 ~~county or district~~ **prosecuting** attorney shall provide victim notification.
 22 The costs of all proceedings, the mental evaluation and the reentry
 23 program authorized by this section shall be paid by the county from which
 24 the person was committed.

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

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

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

36 ~~(b)~~(2) "Mentally ill person" means any person who:

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

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

40 ~~(c)~~(3) "Treatment facility" means any mental health center or clinic,
 41 psychiatric unit of a medical care facility, psychologist, physician or other
 42 institution or individual authorized or licensed by law to provide either
 43 inpatient or outpatient treatment to any patient.

1 Sec.-5: **6.** K.S.A. 2021 Supp. 22-3429 is hereby amended to read as
2 follows: 22-3429. After conviction and prior to sentence and as part of the
3 presentence investigation authorized by K.S.A. 2021 Supp. 21-6703, and
4 amendments thereto, or for crimes committed on or after July 1, 1993, a
5 presentence investigation report as provided in K.S.A. 2021 Supp. 21-
6 6813, and amendments thereto, the trial judge may order the defendant
7 committed *to the state security hospital* for mental examination, evaluation
8 and report. ~~If the defendant is convicted of a felony, the commitment shall~~
9 ~~be to the state security hospital or any suitable local mental health facility.~~
10 ~~If the defendant is convicted of a misdemeanor, the commitment shall be~~
11 ~~to a state hospital or any suitable local mental health facility. If adequate~~
12 ~~private facilities are available and if the defendant is willing to assume the~~
13 ~~expense thereof, commitment may be to a private hospital.~~ A report of the
14 examination and evaluation shall be furnished *by the chief medical officer*
15 to the judge and shall be made available to the ~~prosecuting county or~~
16 ~~district~~ **prosecuting** attorney and counsel for the defendant. A defendant
17 may not be detained for more than 120 days under a commitment made
18 under this section.

19 Sec.-6: **7.** **K.S.A. 22-3301 and** K.S.A. 2021 Supp. 22-3302, 22-3303,
20 22-3305, 22-3428 and 22-3429 are hereby repealed.

21 Sec.-7: **8.** This act shall take effect and be in force from and after its
22 publication in the statute book.