

## HOUSE BILL No. 2010

By Representative Highberger

1-6

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1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to trials; persons found not guilty by reason of mental disease or defect;  
3 jury instruction; amending K.S.A. 2022 Supp. 22-3428 and repealing  
4 the existing section.

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

7 Section 1. K.S.A. 2022 Supp. 22-3428 is hereby amended to read as  
8 follows: 22-3428. (a) (1) When a defendant is acquitted and the jury  
9 answers in the affirmative to the special question asked pursuant to K.S.A.  
10 22-3221, and amendments thereto, the defendant shall be committed to the  
11 state security hospital or an appropriate secure facility for safekeeping and  
12 treatment and the prosecuting attorney shall provide victim notification. A  
13 finding of not guilty and the jury answering in the affirmative to the  
14 special question asked pursuant to K.S.A. 22-3221, and amendments  
15 thereto, shall be prima facie evidence that the acquitted defendant is  
16 presently likely to cause harm to self or others.

17 (2) Within 90 days of the defendant's admission, the chief medical  
18 officer of the state security hospital or licensed psychologist at the  
19 appropriate secure facility shall send to the court a written evaluation  
20 report. Upon receipt of the report, the court shall set a hearing to determine  
21 whether or not the defendant is currently a mentally ill person. The hearing  
22 shall be held within 30 days after the receipt by the court of the chief  
23 medical officer's report unless the court finds that exceptional  
24 circumstances warrant delay of the hearing.

25 (3) The court shall give notice of the hearing to the chief medical  
26 officer of the state security hospital or licensed psychologist at the  
27 appropriate secure facility, the prosecuting attorney, the defendant and the  
28 defendant's attorney. The prosecuting attorney shall provide victim  
29 notification. The court shall inform the defendant that such defendant is  
30 entitled to counsel and that counsel will be appointed to represent the  
31 defendant if the defendant is not financially able to employ an attorney as  
32 provided in K.S.A. 22-4503 et seq., and amendments thereto. The  
33 defendant shall remain at the state security hospital pending the hearing.

34 (4) At the hearing, the defendant shall have the right to present  
35 evidence and cross-examine witnesses. At the conclusion of the hearing, if  
36 the court finds by clear and convincing evidence that the defendant is not

1 currently a mentally ill person, the court shall dismiss the criminal  
2 proceeding and discharge the defendant, otherwise the court may commit  
3 the defendant to the state security hospital or an appropriate secure facility  
4 for treatment or may place the defendant on conditional release pursuant to  
5 subsection (d). The prosecuting attorney shall provide victim notification  
6 regarding the outcome of the hearing.

7 (b) Subject to the provisions of subsection (c):

8 (1) Whenever it appears to the chief medical officer of the state  
9 security hospital or a licensed psychologist at the appropriate secure  
10 facility that a person committed under subsection (a)(4) is not likely to  
11 cause harm to other persons in a less restrictive hospital environment, the  
12 officer may transfer the person to any state hospital, subject to the  
13 provisions of subsection (c). At any time subsequent thereto during which  
14 such person is still committed to a state hospital, if the chief medical  
15 officer of that hospital or the licensed psychologist at the appropriate  
16 secure facility finds that the person may be likely to cause harm or has  
17 caused harm, to others, such officer may transfer the person back to the  
18 state security hospital.

19 (2) Any person committed under subsection (a)(4) may be granted  
20 conditional release or discharge as an involuntary patient.

21 (c) Before transfer of a person from the state security hospital or  
22 appropriate secure facility pursuant to subsection (b)(1) or conditional  
23 release or discharge of a person pursuant to subsection (b)(2), the chief  
24 medical officer of the state security hospital or the state hospital where the  
25 patient is under commitment or the licensed psychologist at the  
26 appropriate secure facility shall give notice to the district court of the  
27 county from which the person was committed that transfer of the patient is  
28 proposed or that the patient is ready for proposed conditional release or  
29 discharge. Such notice shall include, but not be limited to: (1)  
30 Identification of the patient; (2) the course of treatment; (3) a current  
31 assessment of the defendant's mental illness; (4) recommendations for  
32 future treatment, if any; and (5) recommendations regarding conditional  
33 release or discharge, if any. Upon receiving notice, the district court shall  
34 order that a hearing be held on the proposed transfer, conditional release or  
35 discharge. The court shall give notice of the hearing to the appropriate  
36 secure facility, state hospital or state security hospital where the patient is  
37 under commitment, to the prosecuting attorney of the county from which  
38 the person was originally ordered committed. The prosecuting attorney  
39 shall provide victim notification regarding the hearing. The court shall  
40 order the involuntary patient to undergo a mental evaluation by a person  
41 designated by the court. A copy of all orders of the court shall be sent to  
42 the involuntary patient and the patient's attorney. The report of the court  
43 ordered mental evaluation shall be given to the prosecuting attorney, the

1 involuntary patient and the patient's attorney at least seven days prior to  
2 the hearing. The hearing shall be held within 30 days after the receipt by  
3 the court of the chief medical officer's notice unless the court finds that  
4 exceptional circumstances warrant delay of the hearing. The involuntary  
5 patient shall remain in the appropriate secure facility, state hospital or state  
6 security hospital where the patient is under commitment until the hearing  
7 on the proposed transfer, conditional release or discharge is to be held. At  
8 the hearing, the court shall receive all relevant evidence, including the  
9 written findings and recommendations of the chief medical officer of the  
10 state security hospital or the state hospital or the licensed psychologist of  
11 the appropriate secure facility where the patient is under commitment, and  
12 shall determine whether the patient shall be transferred to a less restrictive  
13 hospital environment or whether the patient shall be conditionally released  
14 or discharged. The patient shall have the right to present evidence at such  
15 hearing and to cross-examine any witnesses called by the prosecuting  
16 attorney. At the conclusion of the hearing, if the court finds by clear and  
17 convincing evidence that the patient will not be likely to cause harm to self  
18 or others if transferred to a less restrictive hospital environment, the court  
19 shall order the patient transferred. If the court finds by clear and  
20 convincing evidence that the patient is not currently a mentally ill person,  
21 the court shall order the patient discharged or conditionally released;  
22 otherwise, the court shall order the patient to remain in the state security  
23 hospital or state hospital where the patient is under commitment. If the  
24 court orders the conditional release of the patient in accordance with  
25 subsection (d), the court may order as an additional condition to the release  
26 that the patient continue to take prescribed medication and report as  
27 directed to a person licensed to practice medicine and surgery to determine  
28 whether or not the patient is taking the medication or that the patient  
29 continue to receive periodic psychiatric or psychological treatment. The  
30 prosecuting attorney shall notify any victims of the outcome of the  
31 hearing.

32 (d) In order to ensure the safety and welfare of a patient who is to be  
33 conditionally released and the citizenry of the state, the court may allow  
34 the patient to remain in custody at a facility under the supervision of the  
35 secretary for aging and disability services or the head of the appropriate  
36 secure facility for a period of time not to exceed 45 days in order to permit  
37 sufficient time for the secretary to prepare recommendations to the court  
38 for a suitable reentry program for the patient and allow adequate time for  
39 the prosecuting attorney to provide victim notification. The reentry  
40 program shall be specifically designed to facilitate the return of the patient  
41 to the community as a functioning, self-supporting citizen, and may  
42 include appropriate supportive provisions for assistance in establishing  
43 residency, securing gainful employment, undergoing needed vocational

1 rehabilitation, receiving marital and family counseling, and such other  
2 outpatient services that appear beneficial. If a patient who is to be  
3 conditionally released will be residing in a county other than the county  
4 where the district court that ordered the conditional release is located, the  
5 court shall transfer venue of the case to the district court of the other  
6 county and send a copy of all of the court's records of the proceedings to  
7 the other court. In all cases of conditional release the court shall:

8 (1) Order that the patient be placed under the temporary supervision  
9 of district court probation and parole services, community treatment  
10 facility or any appropriate private agency; and

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

14 (e) At any time during the conditional release period, a conditionally  
15 released patient, through the patient's attorney, or the prosecuting attorney  
16 of the county where the district court having venue is located may file a  
17 motion for modification of the conditions of release, and the court shall  
18 hold an evidentiary hearing on the motion within 14 days of its filing. The  
19 court shall give notice of the time for the hearing to the patient and the  
20 prosecuting attorney. If the court finds from the evidence at the hearing  
21 that the conditional provisions of release should be modified or vacated, it  
22 shall so order. If at any time during the transitional period the designated  
23 medical officer or supervisory personnel or the treatment facility informs  
24 the court that the patient is not satisfactorily complying with the provisions  
25 of the conditional release, the court, after a hearing for which notice has  
26 been given to the prosecuting attorney and the patient, may make orders:  
27 (1) For additional conditions of release designed to effect the ends of the  
28 reentry program; (2) requiring the prosecuting attorney to file a petition to  
29 determine whether the patient is a mentally ill person as provided in  
30 K.S.A. 59-2957, and amendments thereto; or (3) requiring that the patient  
31 be committed to the appropriate secure facility, state security hospital or  
32 any state hospital. In cases where a petition is ordered to be filed, the court  
33 shall proceed to hear and determine the petition pursuant to the care and  
34 treatment act for mentally ill persons and that act shall apply to all  
35 subsequent proceedings. If a patient is committed to any state hospital  
36 pursuant to this act the prosecuting attorney shall provide victim  
37 notification. The costs of all proceedings, the mental evaluation and the  
38 reentry program authorized by this section shall be paid by the county  
39 from which the person was committed.

40 (f) In any case in which the defense that the defendant lacked the  
41 required mental state pursuant to K.S.A. ~~22-3220~~ *2022 Supp. 21-5209*, and  
42 amendments thereto, is relied on, the court shall instruct the jury on the  
43 substance of this section.

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

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

8 (2) "Mentally ill person" means any person who:

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

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

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

16 Sec. 2. K.S.A. 2022 Supp. 22-3428 is hereby repealed.

17 Sec. 3. This act shall take effect and be in force from and after its  
18 publication in the statute book.