

HOUSE BILL No. 2692

By Committee on Judiciary

Requested by Keri Strahler on behalf of Shawnee County Mercy Advocates

2-5

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to principles of criminal liability; providing an exception to criminal
3 liability when a defendant has a mental disease or defect so as not to
4 know the nature of the act or that such act was wrong; amending
5 K.S.A. 21-5209, 22-3219, 22-3221, 22-3222 and 22-3428 and repealing
6 the existing sections.

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

9 Section 1. K.S.A. 21-5209 is hereby amended to read as follows: 21-
10 5209. It shall be a defense to a prosecution under any statute that:

11 (a) The defendant, as a result of mental disease or defect, lacked the
12 culpable mental state required as an element of the crime charged. ~~Mental~~
13 ~~disease or defect is not otherwise a defense; or~~

14 (b) *at the time of committing the alleged criminal act, the defendant*
15 *was laboring under such a mental disease or defect as not to know:*

16 (1) *The nature and quality of such act; or*

17 (2) *that such act was wrong.*

18 Sec. 2. K.S.A. 22-3219 is hereby amended to read as follows: 22-
19 3219. ~~(1)(a)~~ Evidence of mental disease or defect excluding criminal
20 responsibility is not admissible upon a trial unless the defendant serves
21 upon the prosecuting attorney and files with the court a written notice of
22 such defendant's intention to assert ~~the defense that the defendant, as a~~
23 ~~result of mental disease or defect lacked the mental state required as an~~
24 ~~element of the offense charged~~ *a defense described in K.S.A. 21-5209, and*
25 *amendments thereto.* Such notice must be served and filed before trial and
26 not more than 30 days after entry of the plea of not guilty to the
27 information or indictment. For good cause shown the court may permit
28 notice at a later date.

29 ~~(2)(b)~~ A defendant who files a notice of intention to assert ~~the defense~~
30 ~~that the defendant, as a result of mental disease or defect lacked the mental~~
31 ~~state required as an element of the offense charged~~ *a defense described in*
32 *K.S.A. 21-5209, and amendments thereto,* thereby submits and consents to
33 abide by such further orders as the court may make requiring the mental
34 examination of the defendant and designating the place of examination and
35 the physician or licensed psychologist by whom such examination shall be

1 made. No order of the court respecting a mental examination shall
2 preclude the defendant from procuring at such defendant's own expense an
3 examination by a physician or licensed psychologist of such defendant's
4 own choosing. A defendant requesting a mental examination pursuant to
5 K.S.A. 22-4508, and amendments thereto, may request a physician or
6 licensed psychologist of such defendant's own choosing. The judge shall
7 inquire as to the estimated cost for such examination and shall appoint the
8 requested physician or licensed psychologist if such physician or licensed
9 psychologist agrees to accept compensation in an amount in accordance
10 with the compensation standards set by the board of supervisors of panels
11 to aid indigent defendants. A report of each mental examination of the
12 defendant shall be filed in the court and copies thereof shall be supplied to
13 the defendant and the prosecuting attorney.

14 Sec. 3. K.S.A. 22-3221 is hereby amended to read as follows: 22-
15 3221. (a) In any case in which the defense has offered substantial evidence
16 of a mental disease or defect excluding the mental state required as an
17 element of the offense charged *pursuant to K.S.A. 21-5209(a), and*
18 *amendments thereto*, and the jury returns a verdict of "not guilty," the jury
19 shall also answer a special question in the following form: "Do you find
20 the defendant not guilty solely because the defendant, at the time of the
21 alleged crime, was suffering from a mental disease or defect which
22 rendered the defendant incapable of possessing the required criminal
23 intent?" ~~The provisions of this section shall be in force and take effect on~~
24 ~~and after January 1, 1996.~~

25 (b) *In any case in which the defense has offered substantial evidence*
26 *of a mental disease or defect excluding criminal responsibility for the*
27 *offense charged pursuant to K.S.A. 21-5209, and amendments thereto, and*
28 *the jury returns a verdict of "not guilty," the jury shall also answer a*
29 *special question in the following form: "Do you find the defendant not*
30 *guilty solely because the defendant, at the time of the alleged crime, was*
31 *laboring under such a mental disease or defect as not to know: (1) The*
32 *nature and quality of such act; or (2) that such act was wrong?"*

33 Sec. 4. K.S.A. 22-3222 is hereby amended to read as follows: 22-
34 3222. In any case in which the defendant is found not guilty of a charged
35 crime; and the ~~special question under K.S.A. 22-3221 is answered~~ *the jury*
36 *answers in the affirmative to a special question asked pursuant to K.S.A.*
37 *22-3221, and amendments thereto*, and the defendant is also found guilty
38 of a lesser included or otherwise charged offense, the court shall proceed
39 in the manner authorized by K.S.A. 22-3429 et seq., and amendments
40 thereto. ~~The provisions of this section shall be in force and take effect on~~
41 ~~and after January 1, 1996.~~

42 Sec. 5. K.S.A. 22-3428 is hereby amended to read as follows: 22-
43 3428. (a) (1) When a defendant is acquitted and the jury answers in the

1 affirmative to ~~the~~ a special question asked pursuant to K.S.A. 22-3221,
2 and amendments thereto, the defendant shall be committed to the state
3 security hospital or an appropriate secure facility for safekeeping and
4 treatment and the prosecuting attorney shall provide victim notification. A
5 finding of not guilty and the jury answering in the affirmative to ~~the~~ a
6 special question asked pursuant to K.S.A. 22-3221, and amendments
7 thereto, shall be prima facie evidence that the acquitted defendant is
8 presently likely to cause harm to self or others.

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

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

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

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

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

1 secure facility finds that the person may be likely to cause harm or has
2 caused harm, to others, such officer may transfer the person back to the
3 state security hospital.

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

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

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

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

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

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

42 (e) At any time during the conditional release period, a conditionally
43 released patient, through the patient's attorney, or the prosecuting attorney

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

25 (f) In any case in which ~~the a~~ defense ~~that the defendant lacked the~~
 26 ~~required mental state pursuant to~~ *described in* K.S.A. 21-5209, and
 27 amendments thereto, is relied on, the court shall instruct the jury on the
 28 substance of this section.

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

31 (1) "Likely to cause harm to self or others" means that the person is
 32 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 (2) "Mentally ill person" means any person ~~who~~:

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

39 (B) *who* is likely to cause harm to self or others; *and*

40 (C) *whose diagnosis is not solely one of the following mental*
 41 *disorders:*

42 (i) *Alcohol or chemical substance abuse;*

43 (ii) *antisocial personality disorder;*

- 1 (iii) *intellectual disability;*
- 2 (iv) *organic personality syndrome; or*
- 3 (v) *an organic disorder.*

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

8 Sec. 6. K.S.A. 21-5209, 22-3219, 22-3221, 22-3222 and 22-3428 are
9 hereby repealed.

10 Sec. 7. This act shall take effect and be in force from and after its
11 publication in the statute book.