

HOUSE BILL No. 2010

By Representative Highberger

1-6

Proposed Amendments to HB 2010
House Judiciary Committee
Prepared by the Office of Revisor of Statutes
January 25, 2023

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~~. **sections**

housing; annual hearing on continued commitment;

12-736 and K.S.A.

and 22-3428a

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

Section 1. K.S.A. 12-736 is hereby amended: See attachment 1

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.

Sec. 3. K.S.A. 2022 Supp. 22-3428a is hereby amended: See Attachment 2

12-736 and

and 22-3428a are

Attachment 1:
Section 1. K.S.A. 12-736 is hereby amended to read as follows: 12-736. (a) It is hereby declared to be the policy of the state of Kansas that persons with a disability shall not be excluded from the benefits of single family residential surroundings by any municipal zoning ordinance, resolution or regulation.
(b) For the purpose of this act:
(1) "Group home" means any dwelling occupied by not more than 10 persons, including eight or fewer persons with a disability who need not be related by blood or marriage and not to exceed two staff residents who need not be related by blood or marriage to each other or to the residents of the home, which dwelling is licensed by a regulatory agency of this state;
(2) "municipality" means any township, city or county located in Kansas;
(3) "disability" means, with respect to a person:
(A) A physical or mental impairment that substantially limits one or more of such person's major life activities;
(B) a record of having such an impairment; or
(C) being regarded as having such an impairment. Such term does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the controlled substance act, 21 U.S.C. § 802; [and](#)
(4) "licensed provider" means a person or agency who provides mental health services and is licensed by:
(A) The Kansas department for aging and disability services pursuant to K.S.A. [39-2001 et seq. or 65-425 et seq. or K.S.A. 2022 Supp. 39-2001 et seq.](#), and amendments thereto; [or](#)
(B) the behavioral sciences regulatory board pursuant to K.S.A. [74-5301 et seq. or 75-5346 et seq. or 74-5301 et seq.](#), and amendments thereto; [or](#)
(C) the state board of healing arts pursuant to K.S.A. 65-2801 et seq., and amendments thereto.
(c) (1) No mentally ill person shall be eligible for placement in a group home unless such person has been evaluated by a licensed provider and such provider determines that the mentally ill person is not dangerous to others and is suitable for group-home placement. A group home shall not be a licensed provider for the purposes of evaluating or approving for placement a mentally ill person in a group home.
(2) No person shall be eligible for placement in a group home if such person is: (A) Assigned to a community corrections program or a diversion program; (B) on parole from a correctional institution or on probation for a felony offense; [or](#) (C) in a state mental institution following a finding of mental disease or defect excluding criminal responsibility, pursuant to K.S.A. ~~22-3220 and~~ 22-3221, and amendments thereto, [and K.S.A. 2022 Supp. 21-5209, and amendments thereto.](#)
(d) No person shall be placed in a group home under this act unless such dwelling is licensed as a group home by the Kansas department for aging and disability services or the department of health and environment.
(e) No municipality shall prohibit the location of a group home in any zone or area where single family dwellings are permitted. Any zoning ordinance, resolution or regulation that prohibits the location of a group home in such zone or area or that subjects group homes to regulations not applicable to other single family dwellings in the same zone or area is invalid. Notwithstanding the provisions of this act, group homes shall be subject to all other regulations applicable to other property and buildings located in the zone or area that are imposed by any municipality through zoning ordinance, resolution or regulation, its building regulatory codes, subdivision regulations or other nondiscriminatory regulations.
(f) No person or entity shall contract or enter into a contract, restrictive covenant, equitable servitude or such similar restriction that would restrict group homes or their location in a manner inconsistent with the provisions of subsection (e).

Attachment 2:

Sec. 3. K.S.A. 2022 Supp. 22-3428a is hereby amended to read as follows: 22-3428a. (1) ~~(a)~~ Any person found not guilty, pursuant to K.S.A. ~~22-3220 and 22-3221~~, and amendments thereto, ~~and K.S.A. 2022 Supp. 21-5209, and amendments thereto~~, who remains in the state security hospital or a state hospital for over one year pursuant to a commitment under K.S.A. 22-3428, and amendments thereto, shall be entitled annually to request a hearing to determine whether or not the person continues to be a mentally ill person. The request shall be made in writing to the district court of the county where the person is hospitalized and shall be signed by the committed person or the person's counsel. When the request is filed, the court shall give notice of the request to: ~~(a)~~ ~~(1)~~ The county or district attorney of the county in which the person was originally ordered committed; and ~~(b)~~ ~~(2)~~ the chief medical officer of the state security hospital or state hospital where the person is committed. The chief medical officer receiving the notice, or the officer's designee, shall conduct a mental examination of the person and shall send to the district court of the county where the person is hospitalized and to the county or district attorney of the county in which the person was originally ordered committed a report of the examination within 21 days from the date when notice from the court was received. Within 14 days after receiving the report of the examination, the county or district attorney receiving it may file a motion with the district court that gave the notice, requesting the court to change the venue of the hearing to the district court of the county in which the person was originally committed, or the court that gave the notice on its own motion may change the venue of the hearing to the district court of the county in which the person was originally committed. Upon receipt of that motion and the report of the mental examination or upon the court's own motion, the court shall transfer the hearing to the district court specified in the motion and send a copy of the court's records of the proceedings to that court.

~~(2)~~ ~~(b)~~ After the time in which a change of venue may be requested has elapsed, the court having venue shall set a date for the hearing, giving notice thereof to the county or district attorney of the county, the committed person and the person's counsel. The county or district attorney shall provide victim notification. If there is no counsel of record, the court shall appoint a counsel for the committed person. The committed person shall have the right to procure, at the person's own expense, a mental examination by a physician or licensed psychologist of the person's own choosing. If a committed person is financially unable to procure such an examination, the aid to indigent defendants provisions of article 45 of chapter 22 of the Kansas Statutes Annotated, and amendments thereto, shall be applicable to that person. A committed person requesting a mental examination pursuant to K.S.A. 22-4508, and amendments thereto, may request a physician or licensed psychologist of the person's own choosing and the court shall request the physician or licensed psychologist to provide an estimate of the cost of the examination. If the physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants, the judge shall appoint the requested physician or licensed psychologist; otherwise, the court shall designate a physician or licensed psychologist to conduct the examination. Copies of each mental examination of the committed person shall be filed with the court at least seven days prior to the hearing and shall be supplied to the county or district attorney receiving notice pursuant to this section and the committed person's counsel.

~~(3)~~ ~~(c)~~ At the hearing the committed person shall have the right to present evidence and cross-examine the witnesses. The court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or state hospital where the person is under commitment, and shall determine whether the committed person continues to be a mentally ill person. At the hearing the court may make any order that a court is empowered to make pursuant to ~~subsections (3), (4) and (5) of~~ K.S.A. 22-3428~~(c), (d) and (e)~~, and amendments thereto. If the court finds by clear and convincing evidence the committed person is not a mentally ill person, the court shall order the person discharged; otherwise, the person shall remain committed or be conditionally released. The county or district attorney shall provide victim notification regarding the outcome of the hearing.

~~(4)~~ ~~(d)~~ Costs of a hearing held pursuant to this section shall be assessed against and paid by the county in which the person was originally ordered committed.