

HOUSE BILL No. 2353

AN ACT concerning the care and treatment act for mentally ill persons; increasing the time allowed for an initial continued treatment order; adding criteria to determine when outpatient treatment may be ordered; amending K.S.A. 59-2958, 59-2959 and 59-2969 and K.S.A. 2023 Supp. 59-2967 and repealing the existing sections.

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

Section 1. K.S.A. 59-2958 is hereby amended to read as follows: 59-2958. (a) At the time the petition for the determination of whether a person is a mentally ill person subject to involuntary commitment for care and treatment under this act is filed, or any time thereafter prior to the trial upon the petition as provided for in K.S.A. 59-2965, and amendments thereto, the petitioner may request in writing that the district court issue an ex parte emergency order including either or both of the following:

(1) An order directing any law enforcement officer to take the person named in the order into custody and transport the person to a designated treatment facility or other suitable place willing to receive and detain the person; *or*

(2) an order authorizing any named treatment facility or other place to detain or continue to detain the person until the further order of the court or until the ex parte emergency custody order shall expire.

(b) No ex parte emergency custody order shall provide for the detention of any person at a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such admission and detention at a state psychiatric hospital has been filed with the court.

(c) No ex parte emergency custody order shall provide for the detention of any person in a nonmedical facility used for the detention of persons charged with or convicted of a crime.

(d) If no other suitable facility ~~at which~~ *where* such person may be detained is willing to accept the person, then the participating mental health center for that area shall provide a suitable place to detain the person until the further order of the court or until the ex parte emergency custody order shall expire.

(e) An ex parte emergency custody order issued under this section shall expire at 5:00 p.m. of the ~~second~~ *third* day the district court is open for the transaction of business after the date of its issuance, ~~which~~ *and the* expiration date shall be stated in the order.

(f) The district court shall not issue successive ex parte emergency custody orders.

(g) In lieu of issuing an ex parte emergency custody order, the court may allow the person with respect to whom the request was made to remain at liberty, subject to such conditions as the court may impose.

Sec. 2. K.S.A. 59-2959 is hereby amended to read as follows: 59-2959. (a) At the time that the petition for determination of mental illness is filed, or any time thereafter prior to the trial upon the petition as provided for in K.S.A. 59-2965, and amendments thereto, the petitioner may request in writing that the district court issue a temporary custody order. The request shall state:

(1) The reasons why the person should be detained prior to the hearing on the petition;

(2) whether an ex parte emergency custody order has been requested or was granted; and

(3) the present whereabouts of the person named in the petition.

(b) Upon the filing of a request for a temporary custody order, the court shall set the matter for a hearing ~~which~~ *that* shall be held not later than the close of business of the ~~second~~ *third* day the district court is open for the transaction of business after the filing of the request. The petitioner and the person with respect to whom the request has been filed shall be notified of the time and place of the hearing and that they shall each be afforded an opportunity to appear at the hearing, to testify and to present and cross-examine witnesses. If the person with respect to whom the request has been filed has not yet retained or been appointed an attorney, the court shall appoint an attorney for the person.

(c) (1) At the hearing scheduled upon the request, the person with

respect to whom the request has been filed shall be present unless the attorney for the person requests that the person's presence be waived and the court finds that the person's presence at the hearing would be injurious to the person's welfare. The court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the person at the hearing would be injurious to such person's welfare. However, if the person with respect to whom the request has been filed states in writing to the court or to such person's attorney that such person wishes to be present at the hearing, the person's presence cannot be waived.

(2) The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the person with respect to whom the request has been filed. All persons not necessary for the conduct of the proceedings may be excluded. The court shall receive all relevant and material evidence—~~which~~ *that* may be offered. The rules governing evidentiary and procedural matters shall be applied to hearings under this section in a manner so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of issues with due regard to the interests of all parties. The facts or data upon which a duly qualified expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing and if of a type reasonably relied upon by experts in their particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The expert may testify in terms of opinion or inference and give the expert's reasons therefor without prior disclosure of the underlying facts or data unless the court requires otherwise. If requested on cross-examination, the expert shall disclose the underlying facts or data.

(3) If the petitioner is not represented by counsel, the county or district attorney shall represent the petitioner, prepare all necessary papers, appear at the hearing and present such evidence as the county or district attorney determines to be of aid to the court in determining whether or not there is probable cause to believe that the person with respect to whom the request has been filed is a mentally ill person subject to involuntary commitment for care and treatment under this act, and that it would be in the best interests of the person to be detained until the trial upon the petition.

(d) After the hearing, if the court determines from the evidence that:

(1) There is probable cause to believe that the person with respect to whom the request has been filed is a mentally ill person subject to involuntary commitment for care and treatment under this act, and that it is in the best interests of the person to be detained until the trial upon the petition, the court shall issue a temporary custody order;

(2) there is probable cause to believe that the person with respect to whom the request has been filed is a mentally ill person subject to involuntary commitment for care and treatment under this act, but that it would not be in their best interests to be detained until the trial upon the petition, the court may allow the person to be at liberty, subject to such conditions as the court may impose; *or*

(3) there is not probable cause to believe that the person with respect to whom the request has been filed is a mentally ill person subject to involuntary commitment for care and treatment under this act, the court shall terminate the proceedings and release the person.

(e) (1) A temporary custody order issued pursuant to this section may direct any law enforcement officer or any other person designated by the court to take the person named in the order into custody and transport them to a designated treatment facility, and authorize the

designated treatment facility to detain and treat the person until the trial upon the petition.

(2) No temporary custody order shall provide for the detention and treatment of any person at a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such admission and detention at a state psychiatric hospital has been filed with the court.

(3) No temporary custody order shall provide for the detention of any person in a nonmedical facility used for the detention of persons charged with or convicted of a crime.

(4) If no other suitable facility ~~at which~~ *where* such person may be detained is willing to accept the person, then the participating mental health center for that area shall provide a suitable place to detain the person until the further order of the court or until the trial upon the petition.

Sec. 3. K.S.A. 2023 Supp. 59-2967 is hereby amended to read as follows: 59-2967. (a) An order for outpatient treatment may be entered by the court at any time in lieu of any type of order ~~which that~~ would have required inpatient care and treatment if the court finds that the patient ~~is~~:

~~(1) Likely to comply with an outpatient treatment order and that the patient will not likely be a danger to the community or be likely to cause harm to self or others while subject to an outpatient treatment order. Will meet the criteria for required inpatient care and treatment in the proximate future without such outpatient treatment and is only likely to attend outpatient treatment if there is a court order mandating such treatment; or~~

(2) is, if left untreated, reasonably expected to experience an increase in the symptoms caused by the illness that would result in the need for inpatient care and treatment in the proximate future and whose mental illness has previously caused the patient to refuse needed and appropriate mental health services in the community.

(b) No order for outpatient treatment shall be entered unless the head of the outpatient treatment facility has consented to treat the patient on an outpatient basis under the terms and conditions set forth by the court, except that no order for outpatient treatment shall be refused by a participating mental health center.

(c) If outpatient treatment is ordered, the order may state specific conditions to be followed by the patient, but shall include the general condition that the patient is required to comply with all directives and treatment as required by the head of the outpatient treatment facility or the head's designee. *Such directives and treatment plans shall be provided to the court in writing within 10 business days after the order for outpatient treatment is issued. Failure to provide such directives and treatment plans to the court as required by this subsection is not grounds for dismissal of the order unless the failure is made in bad faith.* The court may also make such orders as are appropriate to provide for monitoring the patient's progress and compliance with outpatient treatment. Within any outpatient order for treatment the court shall specify the period of treatment as provided for in ~~subsection (a) of K.S.A. 59-2966(a) or subsection (f) of K.S.A. 59-2969(f), and amendments thereto.~~

(d) The court shall retain jurisdiction to modify or revoke the order for outpatient treatment at any time on its own motion, on the motion of any counsel of record or upon notice from the treatment facility of any need for new conditions in the order for outpatient treatment or of material noncompliance by the patient with the order for outpatient treatment. However, if the venue of the matter has been transferred to another court, then the court having venue of the matter

shall have such jurisdiction to modify or revoke the outpatient treatment order. Revocation or modification of an order for outpatient treatment may be made ex parte by order of the court in accordance with the provisions of subsections (e) or (f).

(e) The treatment facility shall immediately report to the court any material noncompliance by the patient with the outpatient treatment order. Such notice may be verbal or by telephone but shall be followed by a verified written, facsimile or electronic notice sent to the court, to counsel for all parties and, as appropriate, to the head of the inpatient treatment facility designated to receive the patient, by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic communication was made to the court. Upon receipt of verbal, telephone, or verified written, facsimile or electronic notice of material noncompliance, the court may enter an ex parte emergency custody order providing for the immediate detention of the patient in a designated inpatient treatment facility except that the court shall not order the detention of the patient at a state psychiatric hospital, unless a written statement from a qualified mental health professional authorizing such detention at a state psychiatric hospital has been filed with the court. Any ex parte emergency custody order issued by the court under this subsection shall expire at 5:00 p.m. of the ~~second~~ *third* day the district court is open for the transaction of business after the patient is taken into custody. The court shall not enter successive ex parte emergency custody orders.

(f) (1) Upon the taking of a patient into custody pursuant to an ex parte emergency custody order revoking a previously issued order for outpatient treatment and ordering the patient to involuntary inpatient care the court shall set the matter for hearing not later than the close of business on the ~~second~~ *third* day the court is open for business after the patient is taken into custody. Notice of the hearing shall be given to the patient, the patient's attorney, the patient's legal guardian, the petitioner or the county or district attorney as appropriate, the head of the outpatient treatment facility and the head of the inpatient treatment facility, similarly as provided for in K.S.A. 59-2963, and amendments thereto.

(2) Upon the entry of an ex parte order modifying a previously issued order for outpatient treatment, but allowing the patient to remain at liberty, a copy of the order shall be served upon the patient, the patient's attorney, the county or district attorney and the head of the outpatient treatment facility similarly as provided for in K.S.A. 59-2963, and amendments thereto. Thereafter, any party to the matter, including the petitioner, the county or district attorney or the patient, may request a hearing on the matter if the request is filed within five days from the date of service of the ex parte order upon the patient. The court may also order such a hearing on its own motion within five days from the date of service of the notice. If no request or order for hearing is filed within the five-day period, the ex parte order and the terms and conditions set out in the ex parte order shall become the final order of the court substituting for any previously entered order for outpatient treatment. If a hearing is requested, a formal written request for revocation or modification of the outpatient treatment order shall be filed by the county or district attorney or the petitioner and a hearing shall be held thereon within 5 days after the filing of the request.

(g) The hearing held pursuant to subsection (f) shall be conducted in the same manner as hearings provided for in K.S.A. 59-2959, and amendments thereto. Upon the completion of the hearing, if the court finds by clear and convincing evidence that the patient violated any condition of the outpatient treatment order, the court may enter an order for inpatient treatment, except that the court shall not order treatment at

a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such treatment at a state psychiatric hospital has been filed with the court, or may modify the order for outpatient treatment with different terms and conditions in accordance with this section.

(h) The outpatient treatment facility shall comply with the provisions of K.S.A. 59-2969, and amendments thereto, concerning the filing of written reports for each period of treatment during the time any outpatient treatment order is in effect and the court shall receive and process such reports in the same manner as reports received from an inpatient treatment facility.

Sec. 4. K.S.A. 59-2969 is hereby amended to read as follows: 59-2969. (a) At least 14 days prior to the end of each period of treatment, as set out in the court order for such treatment, the head of the treatment facility furnishing treatment to the patient shall cause to be filed with the court a written report summarizing the treatment provided and the findings and recommendations of the treatment facility concerning the need for further treatment for the patient. Upon the filing of this written report, the court shall notify the patient's attorney of record that this written report has been filed. If there is no attorney of record for the patient, the court shall appoint an attorney and notify such attorney that the written report has been filed.

(b) When the attorney for the patient has received notice that the treatment facility has filed with the district court its written report, the attorney shall consult with the patient to determine whether the patient desires a hearing. If the patient desires a hearing, the attorney shall file a written request for a hearing with the district court, ~~which~~ *and the* request shall be filed not later than the last day ending any period of treatment as specified in the court's order for treatment issued pursuant to K.S.A. 59-2966 or 59-2967, and amendments thereto, or the court's last entered order for continued treatment issued pursuant to subsection (f). If the patient does not desire a hearing, the patient's attorney shall file with the court a written statement that the attorney has consulted with the patient; the manner in which the attorney has consulted with the patient; that the attorney has fully explained to the patient the patient's right to a hearing as set out in this section and that if the patient does not request such a hearing that further treatment will likely be ordered, but that having been so advised the patient does not desire a hearing. Thereupon, the court may renew its order for treatment and may specify the next period of treatment as provided for in subsection (f). A copy of the court's order shall be given to the patient, the attorney for the patient, the patient's legal guardian, the petitioner or the county or district attorney, as appropriate, and to the head of the treatment facility treating the patient as the court directs.

(c) Upon receiving a written request for a hearing, the district court shall set the matter for hearing and notice of such hearing shall be given similarly as provided for in K.S.A. 59-2963, and amendments thereto. Notice shall also be given promptly to the head of the treatment facility treating the patient. The hearing shall be held as soon as reasonably practical, but in no event more than 10 days following the filing of the written request for a hearing. The patient shall remain in treatment during the pendency of any such hearing, unless discharged by the head of the treatment facility pursuant to K.S.A. 59-2973, and amendments thereto.

(d) The district court having jurisdiction of any case may, on its own motion or upon written request of any interested party, including the head of the treatment facility where a patient is being treated, hold a hearing to review the patient's status earlier than at the times set out in subsection (b) ~~above~~, if the court determines that a material change of

circumstances has occurred necessitating an earlier hearing, however, the patient shall not be entitled to have more than one review hearing within each period of treatment as specified in any order for treatment, order for out-patient treatment or order for continued treatment.

(e) The hearing shall be conducted in the same manner as hearings provided for in K.S.A. 59-2965, and amendments thereto, except that the hearing shall be to the court and the patient shall not have the right to demand a jury. At the hearing it shall be the petitioner's or county or district attorney's or treatment facility's burden to show that the patient remains a mentally ill person subject to involuntary commitment for care and treatment under this act.

(f) Upon completion of the hearing, if the court finds by clear and convincing evidence that the patient continues to be a mentally ill person subject to involuntary commitment for care and treatment under this act, the court shall order continued treatment for a specified period of time not to exceed ~~three~~ six months for any initial order for continued treatment, nor more than six months in any subsequent order for continued treatment, at an inpatient treatment facility as provided for in K.S.A. 59-2966, and amendments thereto, or at an outpatient treatment facility if the court determines that outpatient treatment is appropriate under K.S.A. 59-2967, and amendments thereto, and a copy of the court's order shall be provided to the head of the treatment facility. If the court finds that it has not been shown by clear and convincing evidence that the patient continues to be a mentally ill person subject to involuntary commitment for care and treatment under this act, it shall release the patient. A copy of the court's order of release shall be provided to the patient, the patient's attorney, the patient's legal guardian or other person known to be interested in the care and welfare of a minor patient, and to the head of the treatment facility ~~at which~~ where the patient had been receiving treatment.

Sec. 5. K.S.A. 59-2958, 59-2959 and 59-2969 and K.S.A. 2023 Supp. 59-2967 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.