Session of 2025

SENATE BILL No. 243

By Committee on Judiciary

2-6

AN ACT concerning criminal procedure; relating to competency to stand trial; requiring the court to make certain findings in treatment orders; requiring outpatient examination and evaluation in certain circumstances; amending K.S.A. 22-3302 and 22-3303 and repealing the existing sections.

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

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

(b) *(1) If a defendant is charged with a misdemeanor, the court shall order the examination and evaluation of a defendant's competency to stand trial on an outpatient basis in an appropriate state, county or private institution or facility.*

(2) If the defendant is charged with a felony,*:*

(A) The hearing to determine the competency of the defendant shall be conducted by a district judge*; and*

(B) the court may order the examination and evaluation of a defendant's competency to stand trial on an outpatient basis in an appropriate state, county or private institution and shall not order inpatient examination and evaluation services at a state hospital or the state security hospital to determine competency unless the court holds a hearing and issues an order stating:

(i) The facts upon which the court determined outpatient competency, examination and evaluation services cannot be conducted in an appropriate state, county or private institution or facility;

(ii) the potential length of incarceration the defendant could be sentenced to serve for each offense;

(iii) the anticipated length of time for completion of inpatient examination and evaluation services;

(iv) whether the defendant is charged with an off-grid or nondrug severity level 1 through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto; and

(v) the conditions that would require a defendant who is currently on bond to be committed for inpatient examination and evaluation, if applicable.

(3) The court shall provide a copy of each order for:

(A) Outpatient competency examination and evaluation to be conducted in an appropriate state, county or private institution or facility to the secretary for aging and disability services or the secretary's designee; and

(B) inpatient competency examination and evaluation to be conducted at the state security hospital or its agent to the state security hopsital.

(c) (1) *Subject to subsection (b),* the court shall determine the issue of competency and may impanel a jury of six persons to assist in making the determination. The court may order a psychiatric or psychological examination of the defendant. To facilitate the examination, the court may:

(A) Order that an evaluation be completed by an appropriate state, county or private institution or facility to be conducted in person or by use of available electronic means while the defendant is in jail, at any secure location or on pretrial release;

(B) designate an appropriate state, county or private institution or facility to conduct the examination while the defendant is in jail, at any secure location or on pretrial release; or

(C) appoint a licensed physician who is qualified through training or experience or a licensed psychologist to examine the defendant and report to the court.

(2) If the court orders the defendant committed to an institution or facility for ~~the~~ *an inpatient* examination, the commitment shall be for a period not to exceed 60 days from the date of admission or until the examination is completed, whichever is the shorter period of time. ~~No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.~~

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

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

(d) *No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.*

(e) If the defendant is found to be competent, the proceedings that have been suspended shall be resumed. If the proceedings were suspended before or during the preliminary examination, the judge who conducted the competency hearing may conduct a preliminary examination or, if a district magistrate judge was conducting the proceedings prior to the competency hearing, the judge who conducted the competency hearing may order the preliminary examination to be heard by a district magistrate judge.

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

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

~~(g)~~*(h)* The defendant shall be present personally at all proceedings under this section.

Sec. 2. K.S.A. 22-3303 is hereby amended to read as follows: 22-3303. (a) (1) A defendant who is charged with a crime and is found to be incompetent to stand trial shall be ordered for evaluation and treatment, conducted on an outpatient or inpatient basis, by an appropriate state, county or private institution or facility. Evaluation or restorative treatment of a defendant shall not be conducted in a jail unless the administrative head or law enforcement official in charge of the jail agrees to such evaluation or restorative treatment being conducted in such jail.

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

(3) For a defendant charged with a misdemeanor offense, outpatient evaluation and treatment ~~may~~ *shall* be ordered to be conducted by an

appropriate state, county or private institution or facility *unless:*

(A) The defendant is held in jail and the official in charge of the jail has determined that the jail does not have the necessary resources to accommodate the evaluation and treatment of the defendant by an appropriate provider in the jail setting; or

(B) the court holds a hearing and makes a finding that inpatient evaluation and treatment is necessary after considering:

(i) The facts upon which the court determined inpatient evaluation and treatment is necessary;

(ii) the potential length of incarceration the defendant could be sentenced to serve for each offense;

(iii) the anticipated length of time for completion of inpatient examination and evaluation services; and

(iv) the conditions that would require a defendant who is currently on bond to be committed for inpatient examination and evaluation, if applicable.

(4) For a defendant charged with a felony offense~~,~~*:*

(A) Outpatient evaluation and treatment may be ordered to be conducted by an appropriate state, county or private institution or facility~~.~~*;*

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

(C) a commitment to the state security hospital or its agent or a state hospital or its agent for inpatient competency evaluation and treatment may only be ordered after the court holds a hearing and issues an order stating:

(i) The facts upon which the court determined that outpatient competency evaluation and treatment services ordered by an appropriate state, county or private institution or facility are not appropriate as a first option for the defendant with commitment for inpatient competency evaluation and treatment services at the state security hospital or its agent or the state hospital or its agency being ordered as an alternative if outpatient services are terminated pursuant to subsection (d);

(ii) the potential length of incarceration the defendant could be sentenced to serve for each offense;

(iii) the anticipated length of time for completion of inpatient examination and evaluation services;

(iv) whether the defendant is charged with an off-grid or nondrug severity level 1 through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments

thereto; and

(v) the conditions that would require a defendant who is currently on bond to be committed for inpatient examination and evaluation, if applicable.

~~(6)~~*(5)* At the commencement of outpatient treatment *at an appropriate state, county or private institution or facility that is not a jail or other secure setting*, the institution or facility conducting the treatment shall notify the prosecuting attorney in the county where the criminal proceeding is pending for the purpose of providing victim notification. *If notification was provided to the victim at the time the defendant was released on bond and no change in the defendant's bond status or address occurred, no additional victim notification is required when outpatient competency evaluation and treatment is commenced.*

(6) The court shall provide a copy of each order for:

(A) Outpatient competency examination and evaluation to be conducted in an appropriate state, county or private institution or facility to the secretary for aging and disability services or the secretary's designee; and

(B) inpatient competency examination and evaluation to be conducted at the state security hospital or its agent to the state security hospital.

(b) (1) Except as provided in subsection (d), if the defendant is ordered to receive an evaluation and treatment on an outpatient basis conducted by an appropriate state, county or private institution or facility, the chief medical officer of such institution or head of such facility shall certify to the court, within 90 days after the commencement of outpatient treatment, whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. The court shall set a hearing within 21 days after certification unless exceptional circumstances warrant delay, for the purpose of determining competency.

(2) If such probability does exist, the court shall order the defendant to remain in jail or at a secure location, on pretrial release pursuant to K.S.A. 22-2802, and amendments thereto, or at an appropriate setting until the defendant attains competency to stand trial or for a period of six months from the date of the commencement of outpatient treatment, whichever occurs first. If such probability does not exist, the court shall order the prosecuting attorney where the charges are filed to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, within 21 days of receipt of the certification from the chief medical officer of the institution or head of the facility unless exceptional circumstances warrant delay. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-

3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e), and amendments thereto, who is likely to cause harm to self or others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

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

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

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

or facility.

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

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

(3) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in paragraph (2), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the prosecuting attorney where the charges are filed or the secretary for aging and disability services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, within 21 days of receipt of the certification from the chief medical officer of the institution or the head of the facility unless exceptional circumstances warrant delay. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-

5604(b) or 21-5812(b), and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e), and amendments thereto, who is likely to cause harm to self or others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

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

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

(d) (1) If the defendant is ordered or met criteria to receive an evaluation and treatment on an outpatient basis and the chief medical officer of the appropriate state, county or private institution or facility determines that the defendant's mental health condition or behaviors warrant terminating outpatient treatment services and commencing evaluation and treatment on an inpatient basis, the chief medical officer of the institution or the head of the facility shall provide a report to the court within 10 days after outpatient treatment services are terminated. Such report shall certify the date that outpatient treatment was terminated and the reason inpatient evaluation and treatment services are recommended. A copy of such report shall be provided to the chief medical officer of the state security hospital. Upon receipt of such report, the court shall issue any orders or warrants required to facilitate the sheriff of the county where the charges are filed to take the defendant into custody and transport such defendant to the state security hospital or its agent or a state hospital or its agent for admission for inpatient services. The chief medical officer shall submit a report pursuant to subsection (e) as to whether the defendant has attained competency within 90 days of the defendant's admission to such hospital for inpatient evaluation and treatment.

(2) The court, prosecuting attorney where criminal charges are pending, the defense counsel for a defendant charged with a felony offense

who is receiving outpatient evaluation and treatment services and the chief medical officer of any institution or the head of any facility where the defendant is receiving outpatient services shall provide requested documentation to the state security hospital or its agent or the state hospital or its agent for the purpose of managing inpatient admission.

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

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

(3) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in paragraph (2), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the prosecuting attorney where the charges are filed or the secretary for aging and disability services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and

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

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

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

(f) (1) Notwithstanding the provisions of K.S.A. 59-29a22, and amendments thereto, psychotropic medications may be prescribed for any defendant who is ordered or has met the criteria to receive evaluation and treatment on an inpatient or outpatient basis at an appropriate state, county or private institution or facility.

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

(3) Whenever any defendant is receiving psychotropic medications that alter the defendant's mental state in such a way as to adversely affect the defendant's judgment or hamper the defendant in preparing for or

participating in any hearing provided for by this section, for two days prior to and during any such hearing, the treatment institution or facility shall not administer such medication or treatment unless such medication or treatment is necessary to sustain the defendant's life or to protect the defendant or others. Prior to the hearing, a report of all psychotropic medications or other treatment that has been administered to the defendant and a copy of any written consent signed by the defendant shall be submitted to the court. Counsel for the defendant may preliminarily examine the attending physician regarding the administration of any medication to the defendant within two days of the hearing and the effect that medication may have had on the defendant's judgment or ability to prepare for or participate in the hearing. If the court determines that medication or other treatment has been administered that adversely affects the defendant's judgment or ability to prepare for or participate in the hearing, the court may grant the defendant a reasonable continuance to allow for the defendant to be better able to prepare for or participate in the hearing. The court shall order that such medication or other treatment be discontinued until the conclusion of the hearing unless the court finds that such medication or other treatment is necessary to sustain the defendant's life or to protect the defendant or others. If the court makes such a finding, the court shall order the hearing to proceed.

(4) If a defendant who is charged with a felony is receiving treatment pursuant to this section and is not deemed a present danger to self or others objects to taking any medication prescribed for the purpose of restoring the defendant to competency, the defendant's objection shall be recorded in the defendant's medical record and written notice of such objection shall be forwarded to the medical director of the treatment institution or facility or the director's designee and to the court where the criminal charges are pending. The medication may be administered over the defendant's objection only if the court finds that:

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

(B) the medication is medically appropriate;

(C) less intrusive alternatives have been considered;

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

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

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

Sec. 3. K.S.A. 22-3302 and 22-3303 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its

publication in the statute book.