

## HOUSE BILL No. 2891

By Representative M. Holmes

2-13

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9 AN ACT concerning the civil commitment of certain persons; relating to  
10 sexually violent predators; relating to the rights of such predators; cre-  
11 ating the crime of battery against a mental health employee; amending  
12 K.S.A. 59-2978, 59-29a08 and 59-29a12 and repealing the existing  
13 sections.  
14

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

16 New Section 1. (a) Battery against a mental health employee is a  
17 battery, as defined in K.S.A. 21-3412, and amendments thereto, com-  
18 mitted against a mental health employee by a person in the custody of  
19 the secretary of social and rehabilitation services, while such employee is  
20 engaged in the performance of such employee's duty.

21 (b) Battery against a mental health employee is a severity level 5,  
22 person felony.

23 (c) As used in this section "mental health employee" means an em-  
24 ployee of the department of social and rehabilitation services working at  
25 Larned state hospital, Osawatomie state hospital and Rainbow mental  
26 health facility, Kansas neurological institute and Parsons state hospital and  
27 training center and treatment staff as defined in K.S.A. 59-29a02, and  
28 amendments thereto.

29 (d) This section shall be part of and supplemental to the Kansas crim-  
30 inal code.

31 New Sec. 2. (a) The rights and rules of conduct applicable to persons  
32 civilly committed to a treatment facility as a sexually violent predator  
33 pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, shall be  
34 established by rules and regulations adopted by the secretary of social  
35 and rehabilitation services. The rules and regulations adopted under this  
36 subsection shall take into consideration the rights of patients as set forth  
37 in K.S.A. 59-2978, and amendments thereto, but shall specifically address  
38 the differing needs and specific characteristics of, and treatment protocols  
39 related to, sexually violent predators. In developing these rules and reg-  
40 ulations, the secretary shall give due regard to security concerns and safety  
41 of the residents, treatment staff, custodial personnel and others in and  
42 about the facility.

43 (b) This section shall be a part of and supplemental to article 29a of

1 chapter 59 of the Kansas Statutes Annotated, and amendments thereto.

2 Sec. 3. K.S.A. 59-2978 is hereby amended to read as follows: 59-  
3 2978. (a) Every patient being treated in any treatment facility, in addition  
4 to all other rights preserved by the provisions of this act, shall have the  
5 following rights:

6 (1) To wear the patient's own clothes, keep and use the patient's own  
7 personal possessions including toilet articles and keep and be allowed to  
8 spend the patient's own money;

9 (2) to communicate by all reasonable means with a reasonable num-  
10 ber of persons at reasonable hours of the day and night, including both  
11 to make and receive confidential telephone calls, and by letter, both to  
12 mail and receive unopened correspondence, except that if the head of  
13 the treatment facility should deny a patient's right to mail or to receive  
14 unopened correspondence under the provisions of subsection (b), such  
15 correspondence shall be opened and examined in the presence of the  
16 patient;

17 (3) to conjugal visits if facilities are available for such visits;

18 (4) to receive visitors in reasonable numbers and at reasonable times  
19 each day;

20 (5) to refuse involuntary labor other than the housekeeping of the  
21 patient's own bedroom and bathroom, provided that nothing herein shall  
22 be construed so as to prohibit a patient from performing labor as a part  
23 of a therapeutic program to which the patient has given their written  
24 consent and for which the patient receives reasonable compensation;

25 (6) not to be subject to such procedures as psychosurgery, electro-  
26 shock therapy, experimental medication, aversion therapy or hazardous  
27 treatment procedures without the written consent of the patient or the  
28 written consent of a parent or legal guardian, if such patient is a minor  
29 or has a legal guardian provided that the guardian has obtained authority  
30 to consent to such from the court which has venue over the guardianship  
31 following a hearing held for that purpose;

32 (7) to have explained, the nature of all medications prescribed, the  
33 reason for the prescription and the most common side effects and, if  
34 requested, the nature of any other treatments ordered;

35 (8) to communicate by letter with the secretary of social and reha-  
36 bilitation services, the head of the treatment facility and any court, attor-  
37 ney, physician, psychologist, or minister of religion, including a Christian  
38 Science practitioner. All such communications shall be forwarded at once  
39 to the addressee without examination and communications from such  
40 persons shall be delivered to the patient without examination;

41 (9) to contact or consult privately with the patient's physician or psy-  
42 chologist, minister of religion, including a Christian Science practitioner,  
43 legal guardian or attorney at any time and if the patient is a minor, their

1 parent;

2 (10) to be visited by the patient's physician, psychologist, minister of  
3 religion, including a Christian Science practitioner, legal guardian or at-  
4 torney at any time and if the patient is a minor, their parent;

5 (11) to be informed orally and in writing of their rights under this  
6 section upon admission to a treatment facility; and

7 (12) to be treated humanely consistent with generally accepted ethics  
8 and practices.

9 (b) The head of the treatment facility may, for good cause only, re-  
10 strict a patient's rights under this section, except that the rights enumer-  
11 ated in subsections (a)(5) through (a)(12), and the right to mail any cor-  
12 respondence which does not violate postal regulations, shall not be  
13 restricted by the head of the treatment facility under any circumstances.  
14 Each treatment facility shall adopt regulations governing the conduct of  
15 all patients being treated in such treatment facility, which regulations shall  
16 be consistent with the provisions of this section. A statement explaining  
17 the reasons for any restriction of a patient's rights shall be immediately  
18 entered on such patient's medical record and copies of such statement  
19 shall be made available to the patient or to the parent, or legal guardian  
20 if such patient is a minor or has a legal guardian, and to the patient's  
21 attorney. In addition, notice of any restriction of a patient's rights shall  
22 be communicated to the patient in a timely fashion.

23 (c) Any person willfully depriving any patient of the rights protected  
24 by this section, except for the restriction of such rights in accordance with  
25 the provisions of subsection (b) or in accordance with a properly obtained  
26 court order, shall be guilty of a class C misdemeanor.

27 (d) *The provisions of this section do not apply to persons civilly com-*  
28 *mitted to a treatment facility as a sexually violent predator pursuant to*  
29 *K.S.A. 59-29a01 et seq., and amendments thereto.*

30 Sec. 4. K.S.A. 59-29a08 is hereby amended to read as follows: 59-  
31 29a08. (a) Each person committed under K.S.A. 59-29a01 et seq., and  
32 amendments thereto, shall have a current examination of the person's  
33 mental condition made once every year. The secretary shall provide the  
34 committed person with an annual written notice of the person's right to  
35 petition the court for release over the secretary's objection. The notice  
36 shall contain a waiver of rights. The secretary shall also forward the annual  
37 report, as well as the annual notice and waiver form, to the court that  
38 committed the person under K.S.A. 59-29a01 et seq., and amendments  
39 thereto. The person may retain, or if the person is indigent and so re-  
40 quests the court may appoint a qualified professional person to examine  
41 such person, and such expert or professional person shall have access to  
42 all records concerning the person. The court that committed the person  
43 under K.S.A. 59-29a01 et seq., and amendments thereto, shall then con-

1 duct an annual review of the status of the committed person's mental  
2 condition. The committed person shall have a right to have an attorney  
3 represent the person at the hearing but the person is not entitled to be  
4 present at the hearing.

5 (b) Nothing contained in K.S.A. 59-29a01 et seq., and amendments  
6 thereto, shall prohibit the person from otherwise petitioning the court for  
7 discharge at this hearing.

8 (c) (1) If the court at the hearing determines that probable cause  
9 exists to believe that the person's mental abnormality or personality dis-  
10 order has so changed that the person is safe to be placed in transitional  
11 release, then the court shall set a hearing on the issue.

12 (2) *The court may order and hold a hearing when: (A) There is cur-*  
13 *rent evidence from an expert or professional person that an identified*  
14 *physiological change to the committed person, such as paralysis, stroke*  
15 *or dementia, that renders the committed person unable to commit a sex-*  
16 *ually violent offense and this change is permanent; and*

17 (B) *the evidence presents a change in condition since the person's last*  
18 *hearing.*

19 (3) At ~~the~~ either hearing, the committed person shall be entitled to  
20 be present and entitled to the benefit of all constitutional protections that  
21 were afforded the person at the initial commitment proceeding. The at-  
22 torney general shall represent the state and shall have a right to a jury  
23 trial and to have the committed person evaluated by experts chosen by  
24 the state. The committed person shall also have the right to have experts  
25 evaluate the person on the person's behalf and the court shall appoint an  
26 expert if the person is indigent and requests an appointment. The burden  
27 of proof at ~~the~~ either hearing shall be upon the state to prove beyond a  
28 reasonable doubt that the committed person's mental abnormality or per-  
29 sonality disorder remains such that the person is not safe to be placed in  
30 transitional release and if transitionally released is likely to engage in acts  
31 of sexual violence.

32 (d) If, after the hearing, the court or jury is convinced beyond a rea-  
33 sonable doubt that the person is not appropriate for transitional release,  
34 the court shall order that the person remain in secure commitment. Oth-  
35 erwise, the court shall order that the person be placed in transitional  
36 release.

37 (e) If the court determines that the person should be placed in tran-  
38 sitional release, the secretary shall transfer the person to the transitional  
39 release program. The secretary may contract for services to be provided  
40 in the transitional release program. During any period the person is in  
41 transitional release, that person shall comply with any rules or regulations  
42 the secretary may establish for this program and every directive of the  
43 treatment staff of the transitional release program.

1 (f) At any time during which the person is in the transitional release  
2 program and the treatment staff determines that the person has violated  
3 any rule, regulation or directive associated with the transitional release  
4 program, the treatment staff may remove the person from the transitional  
5 release program and return the person to the secure commitment facility,  
6 or may request the district court to issue an emergency ex parte order  
7 directing any law enforcement officer to take the person into custody and  
8 return the person to the secure commitment facility. Any such request  
9 may be made verbally or by telephone, but shall be followed in written  
10 or facsimile form delivered to the court by not later than 5:00 p.m. of the  
11 first day the district court is open for the transaction of business after the  
12 verbal or telephonic request was made.

13 (g) Upon the person being returned to the secure commitment fa-  
14 cility from the transitional release program, notice thereof shall be given  
15 by the secretary to the court. The court shall set the matter for a hearing  
16 within two working days of receipt of notice of the person's having been  
17 returned to the secure commitment facility and cause notice thereof to  
18 be given to the attorney general, the person and the secretary. The at-  
19 torney general shall have the burden of proof to show probable cause  
20 that the person violated conditions of transitional release. The hearing  
21 shall be to the court. At the conclusion of the hearing the court shall issue  
22 an order returning the person to the secure commitment facility or to the  
23 transitional release program, and may order such other further conditions  
24 with which the person must comply if the person is returned to the tran-  
25 sitional release program.

26 Sec. 5. K.S.A. 59-29a12 is hereby amended to read as follows: 59-  
27 29a12. (a) *For state budgetary purposes*, the secretary shall be responsible  
28 for all cost relating to the evaluation and treatment of persons committed  
29 to the secretary's custody under any provision of this act. *Payment for the*  
30 *maintenance, care and treatment of any such committed person shall be*  
31 *paid by the person, by the conservator of such person's estate or by any*  
32 *person bound by law to support such person.* Reimbursement may be  
33 obtained by the secretary for the cost of care and treatment, including  
34 placement in transitional release, of persons committed to the secretary's  
35 custody pursuant to K.S.A. 59-2006, and amendments thereto.

36 (b) *When a court orders a person committed to the secretary's custody*  
37 *under any provision of this act to appear at a court proceeding, the county*  
38 *where such court is located shall be responsible for the transportation,*  
39 *security and control of such person and all costs involved. The secretary*  
40 *shall not be required to provide an employee to travel with the committed*  
41 *person.*

42 (c) *Except as provided further, when a court proceeding is initiated*  
43 *by the committed person, such person shall be responsible for making all*

1 *arrangements concerning the transportation, security and control of such*  
2 *person and all costs involved. The secretary shall review and approve all*  
3 *arrangements prior to the court proceeding. The secretary may deny the*  
4 *arrangements if such arrangements fail to meet security standards. The*  
5 *provisions of this subsection shall not apply to a hearing pursuant to*  
6 *K.S.A. 59-29a08, and amendments thereto.*

7 *(d) The secretary shall adopt rules and regulations to implement this*  
8 *section.*

9 Sec. 6. K.S.A. 59-2978, 59-29a08 and 59-29a12 are hereby repealed.

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