

SENATE BILL No. 272

By Committee on Federal and State Affairs

2-12

9 AN ACT concerning criminal procedure; relating to persons incompe-
10 tent to stand trial; amending K.S.A. 22-3303 and 22-3305 and repealing
11 the existing sections.
12

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

14 Section 1. K.S.A. 22-3303 is hereby amended to read as follows: 22-
15 3303. (1) ~~A defendant who is charged with a felony and is found to be~~
16 ~~incompetent to stand trial shall be committed for evaluation and treat-~~
17 ~~ment to the state security hospital or any appropriate county or private~~
18 ~~institution.~~ A defendant who is charged with a *misdemeanor felony* and
19 is found to be incompetent to stand trial shall be committed for evaluation
20 and treatment to any appropriate state, ~~county or private~~ institution *and*
21 *shall not be released until a district court judge finds, after a hearing at*
22 *the institution, that the defendant does not present a danger to such de-*
23 *fendant or others. When making that determination, the district court*
24 *shall consider at least the clinical information presented by the state in-*
25 *stitution which has been generated regarding the competency and mental*
26 *status of the defendant.* Any such commitment shall be for ~~a~~ *an initial*
27 period of not to exceed ~~90~~ 180 days. Within ~~90~~ 180 days after the de-
28 fendant's commitment to such institution, the chief medical officer of
29 such institution shall certify to the *district court in a hearing at the insti-*
30 *tution* whether the defendant ~~has a substantial probability of attaining~~
31 ~~competency is competent~~ to stand trial in the foreseeable future. If such
32 probability does exist, the court shall order the defendant to remain in
33 an appropriate state, ~~county or private~~ institution until the defendant
34 attains competency to stand trial or for a period of six months from the
35 date of the original commitment, whichever occurs first. If such proba-
36 bility does not exist, the court shall order the secretary of social and re-
37 habilitation services to commence involuntary commitment proceedings
38 pursuant to ~~article 29 of chapter 59 of the Kansas Statutes Annotated,~~
39 ~~and any amendments thereto.~~ When a defendant is charged with any off-
40 grid felony, any nondrug severity level 1 through 3 felony, or a violation
41 of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3710, and amend-
42 ments thereto, and commitment proceedings have commenced, for such
43 proceeding, "mentally ill person subject to involuntary commitment for

1 ~~care and treatment” means a mentally ill person, as defined in subsection~~
2 ~~(e) of K.S.A. 59-2946, and amendments thereto, who is likely to cause~~
3 ~~harm to self and others, as defined in subsection (f)(3) of K.S.A. 59-2946,~~
4 ~~and amendments thereto. The other provisions of subsection (f) of K.S.A.~~
5 ~~59-2946, and amendments thereto, shall not apply. If the defendant is~~
6 ~~found to remain incompetent to stand trial, such defendant shall be com-~~
7 ~~mitted for evaluation and treatment to any appropriate state institution~~
8 ~~and shall not be released until a district court judge finds, after a hearing~~
9 ~~at the institution, that the defendant does not present a danger to such~~
10 ~~defendant or others. The foregoing process shall take place every following~~
11 ~~180 days, until, after a hearing at the institution, the defendant is either~~
12 ~~found by the district court to be competent to stand trial, or found incom-~~
13 ~~petent to stand trial but to not present a danger to such defendant or~~
14 ~~others. If the defendant is found by the district court, after a hearing at~~
15 ~~the institution, to be incompetent to stand trial but to not present a danger~~
16 ~~to such defendant or others, the district court shall order the defendant~~
17 ~~released from the state institution. A precondition of any such release by~~
18 ~~the district court shall be that the state institution shall provide proof~~
19 ~~satisfactory to the court of actual written notice, 30 days in advance of~~
20 ~~the defendant’s release, to the county or district attorney where the de-~~
21 ~~fendant was charged, the head of the law enforcement agency in such~~
22 ~~county, and the victim of the crime with which the defendant was charged.~~
23 ~~(2) If a defendant who was found to have had a substantial probability~~
24 ~~of attaining competency to stand trial, as provided in subsection (1), has~~
25 ~~not attained competency to stand trial, or has not been released by the~~
26 ~~district court as provided in subsection (1), within six 12 months from the~~
27 ~~date of the original commitment, the court shall order the secretary of~~
28 ~~social and rehabilitation services to commence involuntary commitment~~
29 ~~proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes~~
30 ~~Annotated, and any amendments thereto. When a defendant is charged~~
31 ~~with any off-grid felony, any nondrug severity level 1 through 3 felony,~~
32 ~~or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719,~~
33 ~~and amendments thereto, and commitment proceedings have com-~~
34 ~~menced, for such proceeding, “mentally ill person subject to involuntary~~
35 ~~commitment for care and treatment” means a mentally ill person, as de-~~
36 ~~defined in subsection (e) of K.S.A. 59-2946, and amendments thereto, who~~
37 ~~is likely to cause harm to self and others, as defined in subsection (f)(3)~~
38 ~~of K.S.A. 59-2946, and amendments thereto. The other provisions of sub-~~
39 ~~section (f) of K.S.A. 59-2946, and amendments thereto, shall not apply.~~
40 ~~(3) Under subsection (1) and (2), if a committed defendant was~~
41 ~~charged with a person felony and is found incompetent to stand trial,~~
42 ~~there shall be a presumption such defendant is a danger to such defendant~~
43 ~~or others, and such presumption may only be overcome if the district~~

1 *court finds the defendant, if released without continuing involuntary*
2 *treatment, will not present a danger to such defendant or others and will*
3 *not be likely to commit a person felony.*

4 ~~(3)~~ (4) When reasonable grounds exist to believe that a defendant
5 who has been adjudged incompetent to stand trial is competent, the court
6 in which the criminal case is pending shall conduct a hearing in accord-
7 ance with K.S.A. 22-3302 and amendments thereto to determine the per-
8 son's present mental condition. Reasonable notice of such hearings shall
9 be given to the prosecuting attorney, the defendant and the defendant's
10 attorney of record, if any. If the court, following such hearing, finds the
11 defendant to be competent, the proceedings pending against the defend-
12 ant shall be resumed.

13 ~~(4)~~ (5) A defendant committed to a ~~public~~ *state* institution under the
14 provisions of this section who is thereafter sentenced for the crime
15 charged at the time of commitment may be credited with all or any part
16 of the time during which the defendant was committed and confined in
17 such ~~public~~ *state* institution.

18 Sec. 2. K.S.A. 22-3305 is hereby amended to read as follows: 22-
19 3305. (1) Whenever involuntary commitment proceedings have been
20 commenced by the secretary of social and rehabilitation services as re-
21 quired by K.S.A. 22-3303 and amendments thereto, and the defendant is
22 not committed to a treatment facility as a patient, the defendant shall
23 remain in the institution where committed pursuant to K.S.A. 22-3303
24 and amendments thereto, and the secretary shall promptly notify the
25 court and the county or district attorney of the county in which the crim-
26 inal proceedings are pending of the result of the involuntary commitment
27 proceeding.

28 (2) Whenever involuntary commitment proceedings have been com-
29 menced by the secretary of social and rehabilitation services as required
30 by K.S.A. 22-3303 and amendments thereto, and the defendant is com-
31 mitted to a treatment facility as a patient but thereafter is to be discharged
32 pursuant to the care and treatment act for mentally ill persons, the de-
33 fendant shall remain in the institution where committed pursuant to
34 K.S.A. 22-3303 and amendments thereto, and the head of the treatment
35 facility shall promptly notify the court and the county or district attorney
36 of the county in which the criminal proceedings are pending that the
37 defendant is to be discharged *subject to provisions of subsection (3)*.

38 ~~When giving notification to the court and the county or district attorney~~
39 ~~pursuant to subsection (1) or (2), the treatment facility shall include in~~
40 ~~such notification an opinion from the head of the treatment facility as to~~
41 ~~whether or not the defendant is now competent to stand trial. Upon~~
42 ~~request of the county or district attorney, the court may set a hearing on~~
43 ~~the issue of whether or not the defendant has been restored to compe-~~

1 tency. If no such request is made within 10 days after receipt of notice
2 pursuant to subsection (1) or (2), the court shall order the defendant to
3 be discharged from commitment and shall dismiss without prejudice the
4 charges against the defendant, and the period of limitation for the pros-
5 ecution for the crime charged shall not continue to run until the defend-
6 ant has been determined to have attained competency in accordance with
7 ~~K.S.A. 22-3302 and amendments thereto.~~

8 (3) *A defendant charged with committing any of the following: capital*
9 *murder as defined in K.S.A. 21-3439, and amendments thereto, an attempt*
10 *to commit capital murder, murder in the first degree, as defined by K.S.A.*
11 *21-3401, and amendments thereto, or an attempt to commit murder in*
12 *the first degree, murder in the second degree as defined by K.S.A. 21-*
13 *3402, and amendments thereto, an attempt to commit murder in the sec-*
14 *ond degree, voluntary manslaughter as defined by K.S.A. 21-3403, and*
15 *amendments thereto, or an attempt to commit voluntary manslaughter,*
16 *involuntary manslaughter, as defined by K.S.A. 21-3404, and amend-*
17 *ments thereto, or any other inherently dangerous felony as described in*
18 *K.S.A. 21-3436, and amendments thereto, shall not be eligible for release*
19 *from a state mental health treatment facility and is deemed to remain a*
20 *danger to such defendant or others as defined by the code for the care*
21 *and treatment for mentally ill persons so long as the defendant continues*
22 *to remain incompetent to stand trial based upon a mental disease or defect*
23 *which interferes with such person's ability to be competent to stand trial.*

24 (4) *A defendant who is committed and charged with the crimes as set*
25 *forth in subsection (3) shall be entitled to a hearing every 12 months to*
26 *determine if the defendant continues to suffer from an underlying mental*
27 *disease or defect which prohibits the defendant from obtaining*
28 *competency.*

29 (5) *Under no circumstances shall a doctor, director or superintendent*
30 *of a state mental health treatment facility discharge a defendant who has*
31 *pending criminal charges, until a hearing is held before the district judge*
32 *presiding over the criminal proceedings has authorized the release of said*
33 *defendant. At the hearing, notice will be given to the county or district*
34 *attorney, the victim or victim's family and the court must determine by*
35 *clear and convincing evidence that the defendant will not pose a danger*
36 *to such defendant or others on the basis of such mental disease or defect*
37 *which prohibits the defendant from being competent to stand trial.*

38 Sec. 3. K.S.A. 22-3303 and 22-3305 are hereby repealed.

39 Sec. 4. This act shall take effect and be in force from and after its
40 publication in the statute book.