

HOUSE BILL No. 2538

By Committee on Judiciary

Requested by Keri Strahler on behalf of Shawnee County Mercy Advocates

1-23

AN ACT concerning crimes, punishment and criminal procedure; relating to principles of criminal liability; providing an exception to criminal liability when a defendant has a mental disease or defect so as not to know the nature of the act or that such act was wrong; amending K.S.A. 21-5209, 22-3219, 22-3221, 22-3222 and 22-3428 and repealing the existing sections.

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

Section 1. K.S.A. 21-5209 is hereby amended to read as follows: 21-5209. It shall be a defense to a prosecution under any statute that:

(a) The defendant, as a result of mental disease or defect, lacked the culpable mental state required as an element of the crime charged. ~~Mental disease or defect is not otherwise a defense; or~~

(b) *at the time of committing the alleged criminal act, the defendant was laboring under a mental disease or defect so as not to know:*

(1) *The nature and quality of such act; or*

(2) *that such act was wrong.*

Sec. 2. K.S.A. 22-3219 is hereby amended to read as follows: 22-3219. ~~(1)(a)~~ Evidence of mental disease or defect excluding criminal responsibility is not admissible upon a trial unless the defendant serves upon the prosecuting attorney and files with the court a written notice of such defendant's intention to assert ~~the defense that the defendant, as a result of mental disease or defect lacked the mental state required as an element of the offense charged~~ *a defense described in K.S.A. 21-5209, and amendments thereto*. Such notice must be served and filed before trial and not more than 30 days after entry of the plea of not guilty to the information or indictment. For good cause shown the court may permit notice at a later date.

~~(2)(b)~~ A defendant who files a notice of intention to assert ~~the defense that the defendant, as a result of mental disease or defect lacked the mental state required as an element of the offense charged~~ *a defense described in K.S.A. 21-5209, and amendments thereto*, thereby submits and consents to abide by such further orders as the court may make requiring the mental examination of the defendant and designating the place of examination and the physician or licensed psychologist by whom such examination shall be

1 made. No order of the court respecting a mental examination shall
2 preclude the defendant from procuring at such defendant's own expense an
3 examination by a physician or licensed psychologist of such defendant's
4 own choosing. A defendant requesting a mental examination pursuant to
5 K.S.A. 22-4508, and amendments thereto, may request a physician or
6 licensed psychologist of such defendant's own choosing. The judge shall
7 inquire as to the estimated cost for such examination and shall appoint the
8 requested physician or licensed psychologist if such physician or licensed
9 psychologist agrees to accept compensation in an amount in accordance
10 with the compensation standards set by the board of supervisors of panels
11 to aid indigent defendants. A report of each mental examination of the
12 defendant shall be filed in the court and copies thereof shall be supplied to
13 the defendant and the prosecuting attorney.

14 Sec. 3. K.S.A. 22-3221 is hereby amended to read as follows: 22-
15 3221. (a) In any case in which the defense has offered substantial evidence
16 of a mental disease or defect excluding the mental state required as an
17 element of the offense charged *pursuant to K.S.A. 21-5209(a), and*
18 *amendments thereto*, and the jury returns a verdict of "not guilty," the jury
19 shall also answer a special question in the following form: "Do you find
20 the defendant not guilty solely because the defendant, at the time of the
21 alleged crime, ~~was suffering from as a result of~~ a mental disease or defect
22 ~~which rendered the defendant incapable of possessing the required~~
23 ~~criminal intent, lacked the culpable mental state required as an element of~~
24 ~~the alleged crime?" The provisions of this section shall be in force and~~
25 ~~take effect on and after January 1, 1996.~~

26 (b) *In any case in which the defense has offered substantial evidence*
27 *of a mental disease or defect excluding criminal responsibility for the*
28 *offense charged pursuant to K.S.A. 21-5209(b), and amendments thereto,*
29 *and the jury returns a verdict of "not guilty," the jury shall also answer a*
30 *special question in the following form: "Do you find the defendant not*
31 *guilty solely because the defendant, at the time of the alleged criminal act,*
32 *was laboring under a mental disease or defect so as not to know: (1) The*
33 *nature and quality of such act; or (2) that such act was wrong?"*

34 Sec. 4. K.S.A. 22-3222 is hereby amended to read as follows: 22-
35 3222. In any case in which the defendant is found not guilty of a charged
36 crime; and the ~~special question under K.S.A. 22-3221 is answered~~ jury
37 ~~answers in the affirmative to a special question asked pursuant to K.S.A.~~
38 ~~22-3221, and amendments thereto~~, and the defendant is also found guilty
39 of a lesser included or otherwise charged offense, the court shall proceed
40 in the manner authorized by K.S.A. 22-3429 et seq., and amendments
41 thereto. ~~The provisions of this section shall be in force and take effect on~~
42 ~~and after January 1, 1996.~~

43 Sec. 5. K.S.A. 22-3428 is hereby amended to read as follows: 22-

1 3428. (a) (1) When a defendant is acquitted and the jury answers in the
2 affirmative to ~~the~~ a special question asked pursuant to K.S.A. 22-3221,
3 and amendments thereto, the defendant shall be committed to the state
4 security hospital or an appropriate secure facility for safekeeping and
5 treatment and the prosecuting attorney shall provide victim notification. A
6 finding of not guilty and the jury answering in the affirmative to ~~the~~ a
7 special question asked pursuant to K.S.A. 22-3221, and amendments
8 thereto, shall be prima facie evidence that the acquitted defendant is
9 presently likely to cause harm to self or others.

10 (2) Within 90 days ~~of~~ after the defendant's admission, the chief
11 medical officer of the state security hospital or licensed psychologist at the
12 appropriate secure facility shall send to the court a written evaluation
13 report. Upon receipt of the report, the court shall set a hearing to determine
14 whether or not the defendant is currently a mentally ill person. The hearing
15 shall be held within 30 days after the receipt by the court of the chief
16 medical officer's report unless the court finds that exceptional
17 circumstances warrant delay of the hearing.

18 (3) The court shall give notice of the hearing to the chief medical
19 officer of the state security hospital or licensed psychologist at the
20 appropriate secure facility, the prosecuting attorney, the defendant and the
21 defendant's attorney. The prosecuting attorney shall provide victim
22 notification. The court shall inform the defendant that such defendant is
23 entitled to counsel and that counsel will be appointed to represent the
24 defendant if the defendant is not financially able to employ an attorney as
25 provided in K.S.A. 22-4503 et seq., and amendments thereto. The
26 defendant shall remain at the state security hospital pending the hearing.

27 (4) At the hearing, the defendant shall have the right to present
28 evidence and cross-examine witnesses. At the conclusion of the hearing, if
29 the court finds by clear and convincing evidence that the defendant is not
30 currently a mentally ill person, the court shall dismiss the criminal
31 proceeding and discharge the defendant, otherwise the court may commit
32 the defendant to the state security hospital or an appropriate secure facility
33 for treatment or may place the defendant on conditional release pursuant to
34 subsection (d). The prosecuting attorney shall provide victim notification
35 regarding the outcome of the hearing.

36 (b) Subject to the provisions of subsection (c):

37 (1) Whenever it appears to the chief medical officer of the state
38 security hospital or a licensed psychologist at the appropriate secure
39 facility that a person committed under subsection (a)(4) is not likely to
40 cause harm to other persons in a less restrictive hospital environment, the
41 officer may transfer the person to any state hospital, ~~subject to the~~
42 ~~provisions of subsection (c).~~ At any time subsequent thereto during which
43 such person is still committed to a state hospital, if the chief medical

1 officer of that hospital or the licensed psychologist at the appropriate
2 secure facility finds that the person may be likely to cause harm or has
3 caused harm, to others, such officer may transfer the person back to the
4 state security hospital.

5 (2) Any person committed under subsection (a)(4) may be granted
6 conditional release or discharge as an involuntary patient.

7 (c) Before transfer of a person from the state security hospital or
8 appropriate secure facility pursuant to subsection (b)(1) or conditional
9 release or discharge of a person pursuant to subsection (b)(2), the chief
10 medical officer of the state security hospital or the state hospital where the
11 patient is under commitment or the licensed psychologist at the
12 appropriate secure facility shall give notice to the district court of the
13 county from which the person was committed that transfer of the patient is
14 proposed or that the patient is ready for proposed conditional release or
15 discharge. Such notice shall include, but not be limited to: (1)
16 Identification of the patient; (2) the course of treatment; (3) a current
17 assessment of the defendant's mental illness; (4) recommendations for
18 future treatment, if any; and (5) recommendations regarding conditional
19 release or discharge, if any. Upon receiving notice, the district court shall
20 order that a hearing be held on the proposed transfer, conditional release or
21 discharge. The court shall give notice of the hearing to the appropriate
22 secure facility, state hospital or state security hospital where the patient is
23 under commitment, to the prosecuting attorney of the county from which
24 the person was originally ordered committed. The prosecuting attorney
25 shall provide victim notification regarding the hearing. The court shall
26 order the involuntary patient to undergo a mental evaluation by a person
27 designated by the court. A copy of all orders of the court shall be sent to
28 the involuntary patient and the patient's attorney. The report of the court
29 ordered mental evaluation shall be given to the prosecuting attorney, the
30 involuntary patient and the patient's attorney at least seven days prior to
31 the hearing. The hearing shall be held within 30 days after the receipt by
32 the court of the chief medical officer's notice unless the court finds that
33 exceptional circumstances warrant delay of the hearing. The involuntary
34 patient shall remain in the appropriate secure facility, state hospital or state
35 security hospital where the patient is under commitment until the hearing
36 on the proposed transfer, conditional release or discharge is to be held. At
37 the hearing, the court shall receive all relevant evidence, including the
38 written findings and recommendations of the chief medical officer of the
39 state security hospital or the state hospital or the licensed psychologist of
40 the appropriate secure facility where the patient is under commitment, and
41 shall determine whether the patient shall be transferred to a less restrictive
42 hospital environment or whether the patient shall be conditionally released
43 or discharged. The patient shall have the right to present evidence at such

1 hearing and to cross-examine any witnesses called by the prosecuting
2 attorney. At the conclusion of the hearing, if the court finds by clear and
3 convincing evidence that the patient will not be likely to cause harm to self
4 or others if transferred to a less restrictive hospital environment, the court
5 shall order the patient transferred. If the court finds by clear and
6 convincing evidence that the patient is not currently a mentally ill person,
7 the court shall order the patient discharged or conditionally released;
8 otherwise, the court shall order the patient to remain in the state security
9 hospital or state hospital where the patient is under commitment. If the
10 court orders the conditional release of the patient in accordance with
11 subsection (d), the court may order as an additional condition to the release
12 that the patient continue to take prescribed medication and report as
13 directed to a person licensed to practice medicine and surgery to determine
14 whether or not the patient is taking the medication or that the patient
15 continue to receive periodic psychiatric or psychological treatment. The
16 prosecuting attorney shall notify any victims of the outcome of the
17 hearing.

18 (d) In order to ensure the safety and welfare of a patient who is to be
19 conditionally released and the citizenry of the state, the court may allow
20 the patient to remain in custody at a facility under the supervision of the
21 secretary for aging and disability services or the head of the appropriate
22 secure facility for a period of time not to exceed 45 days in order to permit
23 sufficient time for the secretary to prepare recommendations to the court
24 for a suitable reentry program for the patient and allow adequate time for
25 the prosecuting attorney to provide victim notification. The reentry
26 program shall be specifically designed to facilitate the return of the patient
27 to the community as a functioning, self-supporting citizen, and may
28 include appropriate supportive provisions for assistance in establishing
29 residency, securing gainful employment, undergoing needed vocational
30 rehabilitation, receiving marital and family counseling, and such other
31 outpatient services that appear beneficial. If a patient who is to be
32 conditionally released will be residing in a county other than the county
33 where the district court that ordered the conditional release is located, the
34 court shall transfer venue of the case to the district court of the other
35 county and send a copy of all of the court's records of the proceedings to
36 the other court. In all cases of conditional release the court shall:

37 (1) Order that the patient be placed under the temporary supervision
38 of district court probation and parole services, community treatment
39 facility or any appropriate private agency; and

40 (2) require as a condition precedent to the release that the patient
41 agree in writing to waive extradition in the event a warrant is issued
42 pursuant to K.S.A. 22-3428b, and amendments thereto.

43 (e) At any time during the conditional release period, a conditionally

1 released patient, through the patient's attorney, or the prosecuting attorney
2 of the county where the district court having venue is located may file a
3 motion for modification of the conditions of release, and the court shall
4 hold an evidentiary hearing on the motion within 14 days of its filing. The
5 court shall give notice of the time for the hearing to the patient and the
6 prosecuting attorney. If the court finds from the evidence at the hearing
7 that the conditional provisions of release should be modified or vacated, it
8 shall so order. If at any time during the transitional period the designated
9 medical officer or supervisory personnel or the treatment facility informs
10 the court that the patient is not satisfactorily complying with the provisions
11 of the conditional release, the court, after a hearing for which notice has
12 been given to the prosecuting attorney and the patient, may make orders:

13 (1) For additional conditions of release designed to effect the ends of the
14 reentry program; (2) requiring the prosecuting attorney to file a petition to
15 determine whether the patient is a mentally ill person as provided in
16 K.S.A. 59-2957, and amendments thereto; or (3) requiring that the patient
17 be committed to the appropriate secure facility, state security hospital or
18 any state hospital. In cases where a petition is ordered to be filed, the court
19 shall proceed to hear and determine the petition pursuant to the care and
20 treatment act for mentally ill persons and that act shall apply to all
21 subsequent proceedings. If a patient is committed to any state hospital
22 pursuant to this act the prosecuting attorney shall provide victim
23 notification. The costs of all proceedings, the mental evaluation and the
24 reentry program authorized by this section shall be paid by the county
25 from which the person was committed.

26 (f) In any case in which ~~the a defense that the defendant lacked the~~
27 ~~required mental state pursuant to~~ *described in* K.S.A. 21-5209, and
28 amendments thereto, is relied on, the court shall instruct the jury on the
29 substance of this section.

30 (g) As used in this section and K.S.A. 22-3428a, and amendments
31 thereto:

32 (1) "Likely to cause harm to self or others" means that the person is
33 likely, in the reasonably foreseeable future, to cause substantial physical
34 injury or physical abuse to self or others or substantial damage to another's
35 property, or evidenced by behavior causing, attempting or threatening such
36 injury, abuse or neglect.

37 (2) "Mentally ill person" means any person ~~who~~:

38 (A) *Who* is suffering from a severe mental disorder to the extent that
39 such person is in need of treatment; ~~and~~

40 (B) *who* is likely to cause harm to self or others; *and*

41 (C) *whose diagnosis is not solely one of the following mental*
42 *disorders:*

43 (i) *Alcohol or chemical substance abuse;*

- 1 (ii) *antisocial personality disorder*;
- 2 (iii) *intellectual disability*;
- 3 (iv) *organic personality syndrome*; or
- 4 (v) *an organic disorder*.

5 (3) "Treatment facility" means any mental health center or clinic,
6 psychiatric unit of a medical care facility, psychologist, physician or other
7 institution or individual authorized or licensed by law to provide either
8 inpatient or outpatient treatment to any patient.

9 Sec. 6. K.S.A. 21-5209, 22-3219, 22-3221, 22-3222 and 22-3428 are
10 hereby repealed.

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