

SENATE BILL No. 374

By Committee on Judiciary

1-22

1 AN ACT concerning criminal procedure; relating to competency of a
2 defendant to stand trial; requiring further consideration of evaluation
3 and treatment for defendants charged with the most serious offenses;
4 requiring certain items to be contained in a petition and written report
5 of the evaluation in an involuntary commitment proceeding; setting
6 requirements for involuntary commitment proceedings when the
7 defendant has not been committed or has been released and the court
8 has determined a probability does not exist that the defendant will
9 regain competency in the foreseeable future; amending K.S.A. 22-3303
10 and 22-3305 and K.S.A. 2025 Supp. 59-2946 and repealing the existing
11 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. (a) (1) A defendant who is charged with a crime and is found to be
16 incompetent to stand trial shall be ordered for evaluation and treatment,
17 conducted on an outpatient or inpatient basis, by an appropriate state,
18 county or private institution or facility. Evaluation or restorative treatment
19 of a defendant shall not be conducted in a jail unless the administrative
20 head or law enforcement official in charge of the jail agrees to such
21 evaluation or restorative treatment being conducted in such jail.

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

26 (3) ~~For a defendant charged with a misdemeanor offense, outpatient~~
27 ~~evaluation and treatment may be ordered to be conducted by an~~
28 ~~appropriate state, county or private institution or facility.~~

29 (4) ~~For a defendant charged with a felony offense, outpatient~~
30 ~~evaluation and treatment may be ordered to be conducted by an~~
31 ~~appropriate state, county or private institution or facility.~~

32 (5) For a defendant charged with a felony offense, a commitment to
33 the state security hospital or its agent or a state hospital or its agent ~~may by~~
34 ~~shall be~~ conducted on ~~a~~ an inpatient basis or, if the defendant meets the
35 screening criteria established by the state security hospital, on an
36 outpatient basis.

1 (6)(4) At the commencement of outpatient treatment, the institution
2 or facility conducting the treatment shall notify the prosecuting attorney ~~in~~
3 ~~the county where the criminal proceeding is for the pending criminal~~
4 ~~proceeding~~ for the purpose of providing victim notification.

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

14 (2) If such probability does exist, the court shall order the defendant
15 to remain in jail or at a secure location, on pretrial release pursuant to
16 K.S.A. 22-2802, and amendments thereto, or at an appropriate setting until
17 the defendant attains competency to stand trial or for a period of six
18 months from the date of the commencement of outpatient treatment,
19 whichever occurs first. If such probability does not exist, *or if the*
20 *defendant has not attained competency to stand trial within six months*
21 *after the date of the commencement of treatment*, the court shall order the
22 prosecuting attorney ~~where the charges are filed for the pending criminal~~
23 *proceeding* to commence involuntary commitment proceedings pursuant to
24 article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments
25 thereto, within 21 days of receipt of the certification from the chief
26 medical officer of the institution or head of the facility unless exceptional
27 circumstances warrant delay. When a defendant is charged with any off-
28 grid felony, any nondrug severity level 1 through 3 felony, or a violation of
29 K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their
30 repeal, or K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-
31 5812(b), and amendments thereto, *or an attempt, conspiracy or criminal*
32 *solicitation of an offense described in this paragraph*, and commitment
33 proceedings have commenced, for such proceeding, "mentally ill person
34 subject to involuntary commitment for care and treatment" means a
35 mentally ill person, as defined in K.S.A. 59-2946(e), and amendments
36 thereto, who is likely to cause harm to self or others, as defined in K.S.A.
37 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.
38 59-2946(f), and amendments thereto, shall not apply.

39 (3) ~~If a defendant who was found to have had a substantial probability~~
40 ~~of attaining competency to stand trial, as provided in paragraph (2), has~~
41 ~~not attained competency to stand trial within six months from the date of~~
42 ~~the original commitment, the court shall order the prosecuting attorney~~
43 ~~where the charges are filed or the secretary for aging and disability~~

1 services to commence involuntary commitment proceedings pursuant to
2 article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments
3 thereto, within 21 days of receipt of the certification from the chief
4 medical officer of the institution or the head of the facility unless
5 exceptional circumstances warrant delay. When a defendant is charged
6 with any off-grid felony, any nondrug severity level 1 through 3 felony, or
7 a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719,
8 prior to their repeal, K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-
9 5604(b) or 21-5812(b), and amendments thereto, and commitment
10 proceedings have commenced, for such proceeding, "mentally ill person
11 subject to involuntary commitment for care and treatment" means a
12 mentally ill person, as defined in K.S.A. 59-2946(e), and amendments
13 thereto, who is likely to cause harm to self or others, as defined in K.S.A.
14 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.
15 59-2946(f), and amendments thereto, shall not apply.

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

26 (5)(4) A defendant committed to a public institution or facility under
27 the provisions of this section who is thereafter sentenced for the crime
28 charged at the time of commitment shall be credited with all of the time
29 during which the defendant was committed and confined in such public
30 institution or facility.

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

38 (2) If such probability does exist, the court shall order the defendant
39 to remain in jail or at a secure location, on pretrial release pursuant to
40 K.S.A. 22-2802, and amendments thereto, or at an appropriate setting until
41 the defendant attains competency to stand trial or for a period of six
42 months from the date of the commencement of outpatient treatment,
43 whichever occurs first. If such probability does not exist, *or if the*

1 *defendant has not attained competency to stand trial within six months*
2 *from the date of the commencement of treatment*, the court shall order the
3 ~~prosecuting attorney where the charges are filed or the secretary for aging~~
4 ~~and disability services for the pending criminal proceeding~~ to commence
5 involuntary commitment proceedings pursuant to article 29 of chapter 59
6 of the Kansas Statutes Annotated, and amendments thereto, within 21 days
7 of receipt of the certification from the chief medical officer of the
8 institution or the head of the facility unless exceptional circumstances
9 warrant delay. When a defendant is charged with any off-grid felony, any
10 nondrug severity level 1 through 3 felony or a violation of K.S.A. 21-
11 3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or
12 K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b),
13 and amendments thereto, *or an attempt, conspiracy or criminal*
14 *solicitation of an offense described in this paragraph*, and commitment
15 proceedings have commenced, for such proceeding, "mentally ill person
16 subject to involuntary commitment for care and treatment" means a
17 mentally ill person, as defined in K.S.A. 59-2946(e), and amendments
18 thereto, who is likely to cause harm to self or others, as defined in K.S.A.
19 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.
20 59-2946(f), and amendments thereto, shall not apply.

21 (3) ~~If a defendant who was found to have had a substantial probability~~
22 ~~of attaining competency to stand trial, as provided in paragraph (2), has~~
23 ~~not attained competency to stand trial within six months from the date of~~
24 ~~the original commitment, the court shall order the prosecuting attorney~~
25 ~~where the charges are filed or the secretary for aging and disability~~
26 ~~services to commence involuntary commitment proceedings pursuant to~~
27 ~~article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments~~
28 ~~thereto, within 21 days of receipt of the certification from the chief~~
29 ~~medical officer of the institution or the head of the facility unless~~
30 ~~exceptional circumstances warrant delay. When a defendant is charged~~
31 ~~with any off-grid felony, any nondrug severity level 1 through 3 felony or~~
32 ~~a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719,~~
33 ~~prior to their repeal, or K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-~~
34 ~~5604(b) or 21-5812(b), and amendments thereto, and commitment~~
35 ~~proceedings have commenced, for such proceeding, "mentally ill person~~
36 ~~subject to involuntary commitment for care and treatment" means a~~
37 ~~mentally ill person, as defined in K.S.A. 59-2946(e), and amendments~~
38 ~~thereto, who is likely to cause harm to self or others, as defined in K.S.A.~~
39 ~~59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.~~
40 ~~59-2946(f), and amendments thereto, shall not apply.~~

41 (4) When reasonable grounds exist to believe that a defendant who
42 has been adjudged incompetent to stand trial is competent, the court in
43 which the criminal case is pending shall conduct a hearing in accordance

1 with K.S.A. 22-3302, and amendments thereto, to determine the person's
2 present mental condition. Such court shall give reasonable notice of such
3 hearings to the prosecuting attorney, the defendant and the defendant's
4 attorney of record, if any. The prosecuting attorney shall provide victim
5 notification. If the court, following such hearing, finds the defendant to be
6 competent, the proceedings pending against the defendant shall be
7 resumed.

8 (5)(4) A defendant committed to a public institution or facility under
9 the provisions of this section who is thereafter sentenced for the crime
10 charged at the time of commitment shall be credited with all of the time
11 during which the defendant was committed and confined in such public
12 institution or facility.

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

32 (2) The court, prosecuting attorney ~~where criminal charges are~~
33 ~~pending~~, the defense counsel for a defendant charged with a felony offense
34 who is receiving outpatient evaluation and treatment services and the chief
35 medical officer of any institution or the head of any facility where the
36 defendant is receiving outpatient services shall provide requested
37 documentation to the state security hospital or its agent or the state
38 hospital or its agent for the purpose of managing inpatient admission.

39 (e) (1) If the defendant is charged with a felony offense, the court
40 may order a defendant to receive inpatient evaluation and treatment at an
41 appropriate state, county or private institution or facility after considering
42 the defendant's mental condition, behaviors and the availability of
43 outpatient evaluation and treatment options. The chief medical officer of

1 the institution or the head of the facility shall certify to the court, within 90
2 days after the commencement of inpatient treatment, whether the
3 defendant has a substantial probability of attaining competency to stand
4 trial in the foreseeable future.

5 (2) If such probability does exist, the court shall order the defendant
6 to remain in jail or at a secure location, on pretrial release pursuant to
7 K.S.A. 22-2802, and amendments thereto, or at an appropriate setting until
8 the defendant attains competency to stand trial or for a period of six
9 months from the date of the commencement of inpatient treatment,
10 whichever occurs first. If such probability does not exist, *or if the*
11 *defendant has not attained competency to stand trial within six months*
12 *from the date of the commencement of treatment*, the court shall order the
13 prosecuting attorney ~~where the charges are filed or the secretary for aging~~
14 ~~and disability services for the pending criminal proceeding~~ to commence
15 involuntary commitment proceedings pursuant to article 29 of chapter 59
16 of the Kansas Statutes Annotated, and amendments thereto, within 21 days
17 of receipt of the certification from the chief medical officer of the
18 institution or the head of the facility unless exceptional circumstances
19 warrant delay. When a defendant is charged with any off-grid felony, any
20 nondrug severity level 1 through 3 felony or a violation of K.S.A. 21-
21 3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or
22 K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b),
23 and amendments thereto, *or an attempt, conspiracy or criminal*
24 *solicitation of an offense described in this paragraph*, and commitment
25 proceedings have commenced, for such proceeding, "mentally ill person
26 subject to involuntary commitment for care and treatment" means a
27 mentally ill person, as defined in K.S.A. 59-2946(e), and amendments
28 thereto, who is likely to cause harm to self or others, as defined in K.S.A.
29 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.
30 59-2946(f), and amendments thereto, shall not apply.

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

1 ~~5604(b) or 21-5812(b), and amendments thereto, and commitment~~
2 ~~proceedings have commenced, for such proceeding, "mentally ill person~~
3 ~~subject to involuntary commitment for care and treatment" means a~~
4 ~~mentally ill person, as defined in K.S.A. 59-2946(e), and amendments~~
5 ~~thereto, who is likely to cause harm to self or others, as defined in K.S.A.~~
6 ~~59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.~~
7 ~~59-2946(f), and amendments thereto, shall not apply.~~

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

18 (5)(4) A defendant committed to a public institution or facility under
19 the provisions of this section who is thereafter sentenced for the crime
20 charged at the time of commitment shall be credited with all of the time
21 during which the defendant was committed and confined in such public
22 institution or facility.

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

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

35 (3) Whenever any defendant is receiving psychotropic medications
36 that alter the defendant's mental state in such a way as to adversely affect
37 the defendant's judgment or hamper the defendant in preparing for or
38 participating in any hearing provided for by this section, for two days prior
39 to and during any such hearing, the treatment institution or facility shall
40 not administer such medication or treatment unless such medication or
41 treatment is necessary to sustain the defendant's life or to protect the
42 defendant or others. Prior to the hearing, a report of all psychotropic
43 medications or other treatment that has been administered to the defendant

1 and a copy of any written consent signed by the defendant shall be
2 submitted to the court. Counsel for the defendant may preliminarily
3 examine the attending physician regarding the administration of any
4 medication to the defendant within two days of the hearing and the effect
5 that medication may have had on the defendant's judgment or ability to
6 prepare for or participate in the hearing. If the court determines that
7 medication or other treatment has been administered that adversely affects
8 the defendant's judgment or ability to prepare for or participate in the
9 hearing, the court may grant the defendant a reasonable continuance to
10 allow for the defendant to be better able to prepare for or participate in the
11 hearing. The court shall order that such medication or other treatment be
12 discontinued until the conclusion of the hearing unless the court finds that
13 such medication or other treatment is necessary to sustain the defendant's
14 life or to protect the defendant or others. If the court makes such a finding,
15 the court shall order the hearing to proceed.

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

25 (A) The medication is substantially unlikely to have side effects that
26 may undermine the fairness of the trial;
27 (B) the medication is medically appropriate;
28 (C) less intrusive alternatives have been considered;
29 (D) the medication is necessary to advance significantly important
30 governmental trial interests; and

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

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

36 (g) *Whenever involuntary commitment proceedings have been
37 commenced as required by this section:*

38 (1) *The petition shall:*

39 (A) *Be accompanied by the court order to commence involuntary
40 commitment proceedings, the initial evaluation to determine competency
41 and the reports pertaining to whether the defendant has a substantial
42 probability of attaining competency to stand trial in the foreseeable future;
43 and*

1 (B) *not be required to include a state screen or a signed certificate;*
2 (2) *the written report of the evaluation shall include:*
3 (A) *A report on the reason for admission or case filing;*
4 (B) *the current mental status of the defendant;*
5 (C) *the medications that the defendant is currently taking, if any;*
6 (D) *the likelihood of the defendant causing harm to self or others,*
7 *including an analysis of whether the defendant understands the*
8 *seriousness of the charges alleged; and*
9 (E) *any diagnosis of the defendant; and*
10 (3) *having been found incompetent in the pending criminal case, the*
11 *defendant shall be deemed to lack capacity to make informed decisions*
12 *concerning treatment until such time as the chief medical officer*
13 *overseeing the defendant's treatment determines that competency is*
14 *restored.*

15 Sec. 2. K.S.A. 22-3305 is hereby amended to read as follows: 22-
16 3305. (a) Whenever involuntary commitment proceedings have been
17 commenced by the ~~secretary for aging and disability services or the~~
18 ~~prosecuting attorney~~ as required by K.S.A. 22-3303, and amendments
19 thereto, ~~and the prosecuting attorney for the pending criminal proceeding~~
20 ~~shall have standing, concurrent with the prosecuting attorney of the~~
21 ~~county in which the hearing is held, to appear at such proceedings, call or~~
22 ~~inquire of any witness with information relevant to the hearing and offer~~
23 ~~argument to the court. If~~ the defendant is not committed to a treatment
24 institution or facility as a patient, the defendant shall remain in the
25 institution or facility where committed pursuant to K.S.A. 22-3303, and
26 amendments thereto, ~~until the court has determined that additional~~
27 ~~evaluation and treatment is no longer warranted pursuant to subsection~~
28 ~~(e).~~ The secretary for aging and disability services or the prosecuting
29 attorney shall promptly notify the court and the prosecuting attorney of the
30 county where the criminal proceedings are pending for the purpose of
31 providing victim notification; of the result of the involuntary commitment
32 proceeding.

33 (b) Whenever involuntary commitment proceedings have been
34 commenced by the secretary for aging and disability services or the
35 prosecuting attorney as required by K.S.A. 22-3303, and amendments
36 thereto, and the defendant is committed to a treatment institution or facility
37 as a patient but thereafter is to be discharged pursuant to the care and
38 treatment act for mentally ill persons, the defendant shall remain in the
39 institution or facility where committed pursuant to K.S.A. 22-3303, and
40 amendments thereto, and the head of the treatment institution or facility
41 shall promptly notify the court and the prosecuting attorney of the county
42 where the criminal proceedings are pending for the purpose of providing
43 victim notification; that the defendant is to be discharged *from the*

1 *involuntary commitment.*

2 (c) When giving notification to the court and the prosecuting attorney
3 pursuant to subsection (a) or (b), the treatment institution or facility shall
4 include in such notification an opinion from the head of the treatment
5 institution or facility as to whether or not the defendant is now competent
6 to stand trial. Upon request of the prosecuting attorney, the court may set a
7 hearing on the issue of whether or not the defendant has been restored to
8 competency. If such hearing request is granted, the prosecuting attorney
9 shall provide victim notification regarding the hearing date. Such hearing
10 request shall be filed within 14 days of completion of the notification from
11 the head of the treatment institution or facility pursuant to subsection (a) or
12 (b). The hearing shall take place within 21 days after receipt of the hearing
13 request unless the court finds that exceptional circumstances warrant delay
14 of the hearing. If no such hearing request is made within 14 days after
15 receipt of notice pursuant to subsection (a) or (b), the court shall order the
16 defendant to be discharged from commitment and shall dismiss without
17 prejudice the charges against the defendant, and the period of limitation for
18 the prosecution for the crime charged shall not continue to run until the
19 defendant has been determined to have attained competency in accordance
20 with K.S.A. 22-3302, and amendments thereto. The prosecuting attorney
21 shall provide victim notification regarding the discharge order.

22 (d) *To determine whether a defendant is likely to cause harm to self*
23 *or others as defined in K.S.A. 59-2946, and amendments thereto, during*
24 *the course of an involuntary commitment proceeding commenced pursuant*
25 *to K.S.A. 22-3303, and amendments thereto, the court shall conduct a*
26 *hearing in accordance with K.S.A. 59-2965(d), and amendments thereto,*
27 *and consider the totality of the circumstances, including, but not limited*
28 *to, prior convictions or adjudications and pending crimes allegedly*
29 *committed by the defendant.*

30 (e) (1) *Whenever involuntary commitment proceedings have been*
31 *commenced as required by K.S.A. 22-3303, and amendments thereto, and*
32 *the defendant has not been committed or has been released from such*
33 *commitment pursuant to subsection (a) or (b) but the court determines that*
34 *a probability still does not exist that the defendant will regain competency*
35 *within the foreseeable future, the court shall consider the nature of the*
36 *pending criminal proceedings to determine if additional evaluation and*
37 *treatment are necessary and:*

38 (A) *If the defendant is charged with a misdemeanor or nonperson*
39 *felony, the court shall dismiss the criminal proceedings without prejudice,*
40 *and the prosecuting attorney shall provide victim notification.*

41 (B) *Except as provided in paragraph (1)(C), if the defendant is*
42 *charged with a person felony, the court shall provide notice to the parties*
43 *of the pending criminal proceedings that, unless the prosecuting attorney*

1 objects in writing within 14 days of receipt of such notice, the criminal
2 proceedings shall be dismissed without prejudice. If the prosecuting
3 attorney objects, the court shall set the matter for hearing within 14 days
4 after receipt of such objection to determine whether to enter an order of
5 further commitment for additional evaluation and treatment pursuant to
6 paragraph (2). The court may grant a continuance of the hearing for good
7 cause.

8 (C) If the defendant is charged with an off-grid felony, any nondrug
9 severity level 1 felony or a violation of K.S.A. 21-3504, 21-3511 or 21-
10 3719, prior to their repeal, or K.S.A. 21-5506(b), 21-5508(b), or 21-
11 5812(b), and amendments thereto, or an attempt, conspiracy or criminal
12 solicitation of an offense described in this subparagraph, the court shall
13 set the matter for hearing to determine whether to enter an order of
14 further commitment for additional evaluation and treatment pursuant to
15 paragraph (2).

16 (2) At a hearing held pursuant to this subsection, the prosecuting
17 attorney has the burden to establish, by a preponderance of the evidence,
18 that there is a compelling state interest in ordering further evaluation and
19 treatment for the defendant. The defendant shall be represented by counsel
20 at such hearing but is not required to be present at the discretion of the
21 court. In making a determination whether there is a compelling state
22 interest in ordering further evaluation and treatment, the court shall
23 review the nature and seriousness of the pending charges, including
24 whether there is probable cause to support the pending charges, and shall
25 consider:

26 (A) Whether the alleged offenses create a serious risk to public safety
27 and evaluate:

28 (i) Whether the charge includes an allegation that the defendant
29 actually inflicted bodily or emotional harm on another person or created a
30 reasonable apprehension of bodily or emotional harm to another person;

31 (ii) the extent of the impact of the alleged offense on public safety;

32 (iii) the number and nature of related charges pending against the
33 defendant;

34 (iv) the length of potential confinement if the defendant is convicted;
35 and

36 (v) the number of potential and actual victims or persons impacted by
37 the defendant's alleged acts;

38 (B) the prior history of the defendant, including, but not limited to,
39 criminal history, treatment history and history of violence; and

40 (C) any evidence of whether further treatment is likely to be
41 successful in restoring competency or reducing the risk of offender
42 recidivism.

43 (3) If the court finds that there is a compelling state interest in

1 *ordering further evaluation and treatment of the defendant, the court shall
2 proceed in accordance with K.S.A. 22-3305, and amendments thereto. If
3 the court finds that there is no compelling state interest in ordering further
4 evaluation and treatment, the case shall be dismissed without prejudice,
5 and the prosecuting attorney shall provide victim notification.*

6 Sec. 3. K.S.A. 2025 Supp. 59-2946 is hereby amended to read as
7 follows: 59-2946. When used in the care and treatment act for mentally ill
8 persons:

9 (a) "Discharge" means the final and complete release from treatment,
10 by either the head of a treatment facility acting pursuant to K.S.A. 59-
11 2950, and amendments thereto, or by an order of a court issued pursuant to
12 K.S.A. 59-2973, and amendments thereto.

13 (b) "Head of a treatment facility" means the administrative director of
14 a treatment facility or such person's designee.

15 (c) "Law enforcement officer" means the same as defined in K.S.A.
16 22-2202, and amendments thereto.

17 (d) (1) "Mental health center" means any community mental health
18 center as defined in K.S.A. 39-2002, and amendments thereto, or a mental
19 health clinic organized as a not-for-profit or a for-profit corporation
20 pursuant to K.S.A. 17-1701 through 17-1775, and amendments thereto, or
21 K.S.A. 17-6001 through 17-6010, and amendments thereto, and licensed in
22 accordance with the provisions of K.S.A. 39-2001 et seq., and
23 amendments thereto.

24 (2) "Participating mental health center" means a mental health center
25 that has entered into a contract with the secretary for aging and disability
26 services pursuant to the provisions of K.S.A. 39-1601 through 39-1612,
27 and amendments thereto.

28 (e) "Mentally ill person" means any person who is suffering from a
29 mental disorder that is manifested by a clinically significant behavioral or
30 psychological syndrome or pattern and associated with either a painful
31 symptom or an impairment in one or more important areas of functioning,
32 and involving substantial behavioral, psychological or biological
33 dysfunction, to the extent that the person is in need of treatment.

34 (f) (1) "Mentally ill person subject to involuntary commitment for
35 care and treatment" means a mentally ill person, as defined in subsection
36 (e), who also lacks capacity to make an informed decision concerning
37 treatment, is likely to cause harm to self or others, and whose diagnosis is
38 not solely one of the following mental disorders: Alcohol or chemical
39 substance abuse; antisocial personality disorder; intellectual disability;
40 organic personality syndrome; or an organic mental disorder.

41 (2) "Lacks capacity to make an informed decision concerning
42 treatment" means that the person, by reason of the person's mental
43 disorder, is unable, despite conscientious efforts at explanation, to

1 understand basically the nature and effects of hospitalization or treatment
2 or is unable to engage in a rational decision-making process regarding
3 hospitalization or treatment, as evidenced by an inability to weigh the
4 possible risks and benefits.

5 (3) (A) "Likely to cause harm to self or others" means that the person,
6 by reason of the person's mental disorder:

7 (A)(i) Is likely, in the reasonably foreseeable future, to cause
8 substantial physical injury or physical abuse to self or others or substantial
9 damage to another's property, as evidenced by behavior threatening,
10 attempting or causing such injury, abuse or damage; except that if the harm
11 threatened, attempted or caused is only harm to the property of another, the
12 harm must be of such a value and extent that the state's interest in
13 protecting the property from such harm outweighs the person's interest in
14 personal liberty; or

15 (B)(ii) is substantially unable, except for reason of indigency, to
16 provide for any of the person's basic needs, such as food, clothing, shelter,
17 health or safety, causing a substantial deterioration of the person's ability
18 to function on the person's own.

19 (B) No person who is being treated by prayer in the practice of the
20 religion of any church that teaches reliance on spiritual means alone
21 through prayer for healing shall be determined to be a mentally ill person
22 subject to involuntary commitment for care and treatment under this act
23 unless substantial evidence is produced upon which the district court finds
24 that the proposed patient is likely in the reasonably foreseeable future to
25 cause substantial physical injury or physical abuse to self or others or
26 substantial damage to another's property, as evidenced by
27 behavior threatening, attempting or causing such injury, abuse or damage;
28 except that if the harm threatened, attempted or caused is only harm to the
29 property of another, the harm must be of such a value and extent that the
30 state's interest in protecting the property from such harm outweighs the
31 person's interest in personal liberty.

32 (C) *A defendant subject to involuntary commitment proceedings
33 commenced pursuant to K.S.A. 22-3303, and amendments thereto, who is
34 charged with an off-grid felony, a nondrug severity level 1 through 3
35 felony or a violation of K.S.A. 21-3504, 21-3511 or 21-3719, prior to their
36 repeal, or K.S.A. 21-5506(b), 21-5508(b) or 21-5812(b), and amendments
37 thereto, or an attempt, conspiracy or criminal solicitation of an offense
38 described in this subparagraph shall be deemed "likely to cause harm to
39 self or others."*

40 (g) "Patient" means a person who is a voluntary patient, a proposed
41 patient or an involuntary patient.

42 (1) "Voluntary patient" means a person who is receiving treatment at
43 a treatment facility pursuant to K.S.A. 59-2949, and amendments thereto.

1 (2) "Proposed patient" means a person for whom a petition pursuant
2 to K.S.A. 59-2952 or 59-2957, and amendments thereto, has been filed.

3 (3) "Involuntary patient" means a person who is receiving treatment
4 under order of a court or a person admitted and detained by a treatment
5 facility pursuant to an application filed pursuant to K.S.A. 59-2954(b) or
6 (c), and amendments thereto.

7 (h) "Physician" means a person licensed to practice medicine and
8 surgery as provided for in the Kansas healing arts act or a person who is
9 employed by a state psychiatric hospital or by an agency of the United
10 States and who is authorized by law to practice medicine and surgery
11 within that hospital or agency.

12 (i) "Psychologist" means a licensed psychologist; as defined by
13 K.S.A. 74-5302, and amendments thereto.

14 (j) "Qualified mental health professional" means a physician or
15 psychologist who is employed by a participating mental health center or
16 who is providing services as a physician or psychologist under a contract
17 with a participating mental health center, a licensed master's level
18 psychologist, a licensed clinical psychotherapist, a licensed marriage and
19 family therapist, a licensed clinical marriage and family therapist, a
20 licensed professional counselor, a licensed clinical professional counselor,
21 a licensed specialist social worker or a licensed master social worker or a
22 registered nurse who has a specialty in psychiatric nursing, who is
23 employed by a participating mental health center and who is acting under
24 the direction of a physician or psychologist who is employed by, or under
25 contract with, a participating mental health center.

26 (1) "Direction" means monitoring and oversight including regular,
27 periodic evaluation of services.

28 (2) "Licensed master social worker" means a person licensed as a
29 master social worker by the behavioral sciences regulatory board under
30 K.S.A. 65-6301 through 65-6318, and amendments thereto.

31 (3) "Licensed specialist social worker" means a person licensed in a
32 social work practice specialty by the behavioral sciences regulatory board
33 under K.S.A. 65-6301 through 65-6318, and amendments thereto.

34 (4) "Licensed master's level psychologist" means a person licensed as
35 a licensed master's level psychologist by the behavioral sciences regulatory
36 board under K.S.A. 74-5361 through 74-5373, and amendments thereto.

37 (5) "Registered nurse" means a person licensed as a registered
38 professional nurse by the board of nursing under K.S.A. 65-1113 through
39 65-1164, and amendments thereto.

40 (k) "Secretary" means the secretary for aging and disability services.

41 (l) "State psychiatric hospital" means Larned state hospital,
42 Osawatomie state hospital or south central regional mental health hospital.

43 (m) "Treatment" means any service intended to promote the mental

1 health of the patient and rendered by a qualified professional, licensed or
2 certified by the state to provide such service as an independent practitioner
3 or under the supervision of such practitioner.

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

9 (o) The terms defined in K.S.A. 59-30,102, and amendments thereto,
10 shall have the meanings provided by that section.

11 Sec. 4. K.S.A. 22-3303 and 22-3305 and K.S.A. 2025 Supp. 59-2946
12 are hereby repealed.

13 Sec. 5. This act shall take effect and be in force from and after its
14 publication in the Kansas register.