

SENATE BILL No. 374

By Committee on Judiciary

1-22

AN ACT concerning criminal procedure; relating to competency of a defendant to stand trial; requiring further consideration of evaluation and treatment for defendants charged with the most serious offenses; requiring certain items to be contained in a petition and written report of the evaluation in an involuntary commitment proceeding; setting requirements for involuntary commitment proceedings when the defendant has not been committed or has been released and the court has determined a probability does not exist that the defendant will regain competency in the foreseeable future; ***requiring the court to make certain findings with respect to a person who is alleged to be mentally ill and subject to involuntary commitment for care and treatment when such person is also a criminal defendant***; amending K.S.A. 22-3303 and, 22-3305 and K.S.A. 2025 Supp. 59-2946 **59-2983** and repealing the existing sections.

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

Section 1. 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 be ordered to be conducted by an appropriate state, county or private institution or facility.~~

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

~~(5) 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 be~~

1 *shall be conducted on—*~~a~~ *an inpatient basis or, if the defendant meets the*
2 *screening criteria established by the state security hospital, on an*
3 *outpatient basis* ***by an appropriate state, county or private institution or***
4 ***facility.***

5 ~~(6)(4)~~ (4) At the commencement of outpatient treatment, the institution
6 or facility conducting the treatment shall notify the prosecuting attorney—~~in~~
7 ~~the county where the criminal proceeding is for the pending criminal~~
8 ~~proceeding~~ for the purpose of providing victim notification.

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

18 (2) If such probability does exist, the court shall order the defendant
19 to remain in jail or at a secure location, on pretrial release pursuant to
20 K.S.A. 22-2802, and amendments thereto, or at an appropriate setting until
21 the defendant attains competency to stand trial or for a period of six
22 months from the date of the commencement of outpatient treatment,
23 whichever occurs first. If such probability does not exist, *or if the*
24 *defendant has not attained competency to stand trial within six months*
25 *after the date of the commencement of treatment*, the court shall order the
26 prosecuting attorney—~~where the charges are filed for the pending criminal~~
27 ~~proceeding~~ to commence involuntary commitment proceedings pursuant to
28 article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments
29 thereto, within 21 days of receipt of the certification from the chief
30 medical officer of the institution or head of the facility unless exceptional
31 circumstances warrant delay. When a defendant is charged with any off-
32 grid felony, any nondrug severity level 1 through 3 felony, or a violation of
33 K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their
34 repeal, or K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-
35 5812(b), and amendments thereto, *or an attempt, conspiracy or criminal*
36 *solicitation of an offense described in this paragraph*, and commitment
37 proceedings have commenced, for such proceeding, "mentally ill person
38 subject to involuntary commitment for care and treatment" means a
39 mentally ill person, as defined in K.S.A. 59-2946(e), and amendments
40 thereto, who is likely to cause harm to self or others, as defined in K.S.A.
41 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.
42 59-2946(f), and amendments thereto, shall not apply.

43 (3)—~~If a defendant who was found to have had a substantial probability~~

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

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

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

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

42 (2) If such probability does exist, the court shall order the defendant
43 to remain in jail or at a secure location, on pretrial release pursuant to

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

25 (3) ~~If a defendant who was found to have had a substantial probability~~
26 ~~of attaining competency to stand trial, as provided in paragraph (2), has~~
27 ~~not attained competency to stand trial within six months from the date of~~
28 ~~the original commitment, the court shall order the prosecuting attorney~~
29 ~~where the charges are filed or the secretary for aging and disability~~
30 ~~services to commence involuntary commitment proceedings pursuant to~~
31 ~~article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments~~
32 ~~thereto, within 21 days of receipt of the certification from the chief~~
33 ~~medical officer of the institution or the head of the facility unless~~
34 ~~exceptional circumstances warrant delay. When a defendant is charged~~
35 ~~with any off-grid felony, any nondrug severity level 1 through 3 felony or~~
36 ~~a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719,~~
37 ~~prior to their repeal, or K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-~~
38 ~~5604(b) or 21-5812(b), and amendments thereto, and commitment~~
39 ~~proceedings have commenced, for such proceeding, "mentally ill person~~
40 ~~subject to involuntary commitment for care and treatment" means a~~
41 ~~mentally ill person, as defined in K.S.A. 59-2946(e), and amendments~~
42 ~~thereto, who is likely to cause harm to self or others, as defined in K.S.A.~~
43 ~~59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.~~

1 ~~59-2946(f), and amendments thereto, shall not apply.~~

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

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

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

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

43 (e) (1) If the defendant is charged with a felony offense, the court

1 may order a defendant to receive inpatient evaluation and treatment at an
2 appropriate state, county or private institution or facility after considering
3 the defendant's mental condition, behaviors and the availability of
4 outpatient evaluation and treatment options. The chief medical officer of
5 the institution or the head of the facility shall certify to the court, within 90
6 days after the commencement of inpatient treatment, whether the
7 defendant has a substantial probability of attaining competency to stand
8 trial in the foreseeable future.

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

35 (3) ~~If a defendant who was found to have had a substantial probability~~
36 ~~of attaining competency to stand trial, as provided in paragraph (2), has~~
37 ~~not attained competency to stand trial within six months from the date of~~
38 ~~the original commitment, the court shall order the prosecuting attorney~~
39 ~~where the charges are filed or the secretary for aging and disability~~
40 ~~services to commence involuntary commitment proceedings pursuant to~~
41 ~~article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments~~
42 ~~thereto, within 21 days of receipt of the certification from the chief~~
43 ~~medical officer of the institution or the head of the facility unless~~

1 ~~exceptional circumstances warrant delay. When a defendant is charged~~
2 ~~with any off-grid felony, any nondrug severity level 1 through 3 felony or~~
3 ~~a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719,~~
4 ~~prior to their repeal, or K.S.A. 21-5505(b), 21-5506(b), 21-5508(b), 21-~~
5 ~~5604(b) or 21-5812(b), and amendments thereto, and commitment~~
6 ~~proceedings have commenced, for such proceeding, "mentally ill person~~
7 ~~subject to involuntary commitment for care and treatment" means a~~
8 ~~mentally ill person, as defined in K.S.A. 59-2946(e), and amendments~~
9 ~~thereto, who is likely to cause harm to self or others, as defined in K.S.A.~~
10 ~~59-2946(f)(3), and amendments thereto. The other provisions of K.S.A.~~
11 ~~59-2946(f), and amendments thereto, shall not apply.~~

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

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

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

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

39 (3) Whenever any defendant is receiving psychotropic medications
40 that alter the defendant's mental state in such a way as to adversely affect
41 the defendant's judgment or hamper the defendant in preparing for or
42 participating in any hearing provided for by this section, for two days prior
43 to and during any such hearing, the treatment institution or facility shall

1 not administer such medication or treatment unless such medication or
2 treatment is necessary to sustain the defendant's life or to protect the
3 defendant or others. Prior to the hearing, a report of all psychotropic
4 medications or other treatment that has been administered to the defendant
5 and a copy of any written consent signed by the defendant shall be
6 submitted to the court. Counsel for the defendant may preliminarily
7 examine the attending physician regarding the administration of any
8 medication to the defendant within two days of the hearing and the effect
9 that medication may have had on the defendant's judgment or ability to
10 prepare for or participate in the hearing. If the court determines that
11 medication or other treatment has been administered that adversely affects
12 the defendant's judgment or ability to prepare for or participate in the
13 hearing, the court may grant the defendant a reasonable continuance to
14 allow for the defendant to be better able to prepare for or participate in the
15 hearing. The court shall order that such medication or other treatment be
16 discontinued until the conclusion of the hearing unless the court finds that
17 such medication or other treatment is necessary to sustain the defendant's
18 life or to protect the defendant or others. If the court makes such a finding,
19 the court shall order the hearing to proceed.

20 (4) (A) If a defendant who is charged with a felony is receiving
21 treatment pursuant to this section and is not deemed a present danger to
22 self or others objects to taking any medication prescribed for the purpose
23 of restoring the defendant to competency, the defendant's objection shall
24 be recorded in the defendant's medical record and written notice of such
25 objection shall be forwarded to the medical director of the treatment
26 institution or facility or the director's designee and to the court where the
27 criminal charges are pending. ~~The medication may be administered over~~
28 ~~the defendant's objection only if the court finds~~ ***Within 30 days after***
29 ***receipt of such objection, the medical director of the treatment***
30 ***institution or facility shall certify to the court whether medication would***
31 ***aid in restoring the defendant's competency. The court shall set the***
32 ***matter for hearing within 30 days after receipt of such certification***
33 ***unless exceptional circumstances warrant delay. At such hearing, the***
34 ***prosecuting attorney has the burden to establish by clear and convincing***
35 ***evidence*** that:

36 (A) (i) ***The medication is substantially likely to render the***
37 ***defendant competent to stand trial;***

38 (ii) the medication is substantially unlikely to have side effects that
39 may undermine the fairness of the trial;

40 ~~(B)~~(iii) the medication is medically appropriate;

41 ~~(C)~~(iv) less intrusive alternatives have been considered;

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

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

4 ***(B) The defendant shall be represented by counsel at a hearing***
5 ***conducted pursuant to subparagraph (A) but is not required to be***
6 ***present at the discretion of the court. The court shall permit the***
7 ***prosecuting attorney and the defendant to present evidence and***
8 ***witnesses relevant to the matter. The court may permit testimony***
9 ***through a two-way electronic audio-visual communication device. Any***
10 ***other proceeding related to the defendant's competency shall be***
11 ***suspended or continued pending a determination of the court under this***
12 ***paragraph. If the court makes a written finding that the prosecuting***
13 ***attorney has met the burden described in subparagraph (A), the court***
14 ***shall issue an order requiring the medication to be administered over the***
15 ***defendant's objection. If the court makes a written finding that the***
16 ***prosecuting attorney has failed to meet such burden, the court shall***
17 ***order competency proceedings to resume.***

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

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

22 (1) *The petition shall:*

23 (A) *Be accompanied by the court order to commence involuntary*
24 *commitment proceedings, the initial evaluation to determine competency*
25 *and the reports pertaining to whether the defendant has a substantial*
26 *probability of attaining competency to stand trial in the foreseeable future;*
27 *and*

28 (B) *not be required to include a state screen or a signed certificate;*

29 (2) *the written report of the evaluation shall include:*

30 (A) *A report on the reason for admission or case filing;*

31 (B) *the current mental status of the defendant;*

32 (C) *the medications that the defendant is currently taking, if any;*

33 (D) *the likelihood of the defendant causing harm to self or others,*
34 *including an analysis of whether the defendant understands the*
35 *seriousness of the charges alleged; and*

36 (E) *any diagnosis of the defendant; and*

37 (3) *having been found incompetent in the pending criminal case, the*
38 *defendant shall be deemed to lack capacity to make informed decisions*
39 *concerning treatment until such time as the chief medical officer*
40 *overseeing the defendant's treatment determines that competency is*
41 *restored.*

42 Sec. 2. K.S.A. 22-3305 is hereby amended to read as follows: 22-
43 3305. (a) Whenever involuntary commitment proceedings have been

1 ~~commenced by the secretary for aging and disability services or the~~
2 ~~prosecuting attorney~~ as required by K.S.A. 22-3303, and amendments
3 thereto, ~~and the prosecuting attorney for the pending criminal proceeding~~
4 *shall have standing, concurrent with the prosecuting attorney of the*
5 *county in which the hearing is held, to appear at such proceedings, call or*
6 *inquire of any witness with information relevant to the hearing and offer*
7 *argument to the court. If the defendant is not committed to a treatment*
8 *institution or facility as a patient, the defendant shall remain in the*
9 *institution or facility where committed pursuant to K.S.A. 22-3303, and*
10 *amendments thereto, until the court has determined that additional*
11 *evaluation and treatment is no longer warranted pursuant to subsection*
12 *(e). The secretary for aging and disability services or the prosecuting*
13 *attorney shall promptly notify the court and the prosecuting attorney of the*
14 *county where the criminal proceedings are pending for the purpose of*
15 *providing victim notification; of the result of the involuntary commitment*
16 *proceeding.*

17 (b) Whenever involuntary commitment proceedings have been
18 commenced by the secretary for aging and disability services or the
19 prosecuting attorney as required by K.S.A. 22-3303, and amendments
20 thereto, and the defendant is committed to a treatment institution or facility
21 as a patient but thereafter is to be discharged pursuant to the care and
22 treatment act for mentally ill persons, the defendant shall remain in the
23 institution or facility where committed pursuant to K.S.A. 22-3303, and
24 amendments thereto, and the head of the treatment institution or facility
25 shall promptly notify the court and the prosecuting attorney of the county
26 where the criminal proceedings are pending for the purpose of providing
27 victim notification; that the defendant is to be discharged *from the*
28 *involuntary commitment.*

29 (c) When giving notification to the court and the prosecuting attorney
30 pursuant to subsection (a) or (b), the treatment institution or facility shall
31 include in such notification an opinion from the head of the treatment
32 institution or facility as to whether or not the defendant is now competent
33 to stand trial. Upon request of the prosecuting attorney, the court may set a
34 hearing on the issue of whether or not the defendant has been restored to
35 competency. If such hearing request is granted, the prosecuting attorney
36 shall provide victim notification regarding the hearing date. Such hearing
37 request shall be filed within 14 days of completion of the notification from
38 the head of the treatment institution or facility pursuant to subsection (a) or
39 (b). The hearing shall take place within 21 days after receipt of the hearing
40 request unless the court finds that exceptional circumstances warrant delay
41 of the hearing. If no such hearing request is made within 14 days after
42 receipt of notice pursuant to subsection (a) or (b), the court shall order the
43 defendant to be discharged from commitment and shall dismiss without

1 prejudice the charges against the defendant, and the period of limitation for
2 the prosecution for the crime charged shall not continue to run until the
3 defendant has been determined to have attained competency in accordance
4 with K.S.A. 22-3302, and amendments thereto. The prosecuting attorney
5 shall provide victim notification regarding the discharge order.

6 ~~(d)—To determine whether a defendant is likely to cause harm to self~~
7 ~~or others as defined in K.S.A. 59-2946, and amendments thereto, during~~
8 ~~the course of an involuntary commitment proceeding commenced pursuant~~
9 ~~to K.S.A. 22-3303, and amendments thereto, the court shall conduct a~~
10 ~~hearing in accordance with K.S.A. 59-2965(d), and amendments thereto,~~
11 ~~and consider the totality of the circumstances, including, but not limited~~
12 ~~to, prior convictions or adjudications and pending crimes allegedly~~
13 ~~committed by the defendant.~~

14 ~~(e) (1) Whenever involuntary commitment proceedings have been~~
15 ~~commenced as required by K.S.A. 22-3303, and amendments thereto, and~~
16 ~~the defendant has not been committed or has been released from such~~
17 ~~commitment pursuant to subsection (a) or (b) but the court determines that~~
18 ~~a probability still does not exist that the defendant will regain competency~~
19 ~~within the foreseeable future, the court shall consider the nature of the~~
20 ~~pending criminal proceedings to determine if additional evaluation and~~
21 ~~treatment are necessary and:~~

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

25 (B) Except as provided in paragraph (1)(C), if the defendant is
26 charged with a person felony, the court shall provide notice to the parties
27 of the pending criminal proceedings that, unless the prosecuting attorney
28 objects in writing within 14 days of receipt of such notice, the criminal
29 proceedings shall be dismissed without prejudice. If the prosecuting
30 attorney objects, the court shall set the matter for hearing within 14 days
31 after receipt of such objection to determine whether to enter an order of
32 further commitment for additional evaluation and treatment pursuant to
33 paragraph (2). The court may grant a continuance of the hearing for good
34 cause.

35 (C) If the defendant is charged with an off-grid felony, any nondrug
36 severity level 1 **through 3** felony or a violation of K.S.A. 21-3504, 21-3511
37 or 21-3719, prior to their repeal, or K.S.A. 21-5506(b), 21-5508(b), or 21-
38 5812(b), and amendments thereto, or an attempt, conspiracy or criminal
39 solicitation of an offense described in this subparagraph, the court shall
40 set the matter for hearing to determine whether to enter an order of
41 further commitment for additional evaluation and treatment pursuant to
42 paragraph (2).

43 (2) At a hearing held pursuant to this subsection, the prosecuting

1 attorney has the burden to establish, by a preponderance of the evidence,
2 that there is a compelling state interest in ordering further evaluation and
3 treatment for the defendant. The defendant shall be represented by counsel
4 at such hearing but is not required to be present at the discretion of the
5 court. In making a determination whether there is a compelling state
6 interest in ordering further evaluation and treatment, the court shall
7 review the nature and seriousness of the pending charges, including
8 whether there is probable cause to support the pending charges, and shall
9 consider:

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

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

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

16 (iii) the number and nature of related charges pending against the
17 defendant;

18 (iv) the length of potential confinement if the defendant is convicted;
19 and

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

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

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

27 (3) If the court finds that there is a compelling state interest in
28 ordering further evaluation and treatment of the defendant, the court shall
29 proceed in accordance with K.S.A. ~~22-3305~~ 22-3303, and amendments
30 thereto. If the court finds that there is no compelling state interest in
31 ordering further evaluation and treatment, the case shall be dismissed
32 without prejudice, and the prosecuting attorney shall provide victim
33 notification.

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

37 (a) ~~"Discharge" means the final and complete release from treatment,~~
38 ~~by either the head of a treatment facility acting pursuant to K.S.A. 59-~~
39 ~~2950, and amendments thereto, or by an order of a court issued pursuant to~~
40 ~~K.S.A. 59-2973, and amendments thereto.~~

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

43 (c) ~~"Law enforcement officer" means the same as defined in K.S.A.~~

1 22-2202, and amendments thereto.

2 (d) (1) ~~"Mental health center" means any community mental health~~
3 ~~center as defined in K.S.A. 39-2002, and amendments thereto, or a mental~~
4 ~~health clinic organized as a not-for-profit or a for-profit corporation~~
5 ~~pursuant to K.S.A. 17-1701 through 17-1775, and amendments thereto, or~~
6 ~~K.S.A. 17-6001 through 17-6010, and amendments thereto, and licensed in~~
7 ~~accordance with the provisions of K.S.A. 39-2001 et seq., and~~
8 ~~amendments thereto.~~

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

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

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

26 (2) ~~"Lacks capacity to make an informed decision concerning~~
27 ~~treatment" means that the person, by reason of the person's mental~~
28 ~~disorder, is unable, despite conscientious efforts at explanation, to~~
29 ~~understand basically the nature and effects of hospitalization or treatment~~
30 ~~or is unable to engage in a rational decision-making process regarding~~
31 ~~hospitalization or treatment, as evidenced by an inability to weigh the~~
32 ~~possible risks and benefits.~~

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

35 (A)(i) ~~Is likely, in the reasonably foreseeable future, to cause~~
36 ~~substantial physical injury or physical abuse to self or others or substantial~~
37 ~~damage to another's property, as evidenced by behavior threatening,~~
38 ~~attempting or causing such injury, abuse or damage; except that if the harm~~
39 ~~threatened, attempted or caused is only harm to the property of another, the~~
40 ~~harm must be of such a value and extent that the state's interest in~~
41 ~~protecting the property from such harm outweighs the person's interest in~~
42 ~~personal liberty; or~~

43 (B)(ii) ~~is substantially unable, except for reason of indigency, to~~

1 provide for any of the person's basic needs, such as food, clothing, shelter,
2 health or safety, causing a substantial deterioration of the person's ability
3 to function on the person's own.

4 ~~(B) No person who is being treated by prayer in the practice of the~~
5 ~~religion of any church that teaches reliance on spiritual means alone~~
6 ~~through prayer for healing shall be determined to be a mentally ill person~~
7 ~~subject to involuntary commitment for care and treatment under this act~~
8 ~~unless substantial evidence is produced upon which the district court finds~~
9 ~~that the proposed patient is likely in the reasonably foreseeable future to~~
10 ~~cause substantial physical injury or physical abuse to self or others or~~
11 ~~substantial damage to another's *another person's* property, as evidenced by~~
12 ~~behavior threatening, attempting or causing such injury, abuse or damage;~~
13 ~~except that if the harm threatened, attempted or caused is only harm to the~~
14 ~~property of another, the harm must be of such a value and extent that the~~
15 ~~state's interest in protecting the property from such harm outweighs the~~
16 ~~person's interest in personal liberty.~~

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

25 ~~(g) "Patient" means a person who is a voluntary patient, a proposed~~
26 ~~patient or an involuntary patient.~~

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

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

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

35 ~~(h) "Physician" means a person licensed to practice medicine and~~
36 ~~surgery as provided for in the Kansas healing arts act or a person who is~~
37 ~~employed by a state psychiatric hospital or by an agency of the United~~
38 ~~States and who is authorized by law to practice medicine and surgery~~
39 ~~within that hospital or agency.~~

40 ~~(i) "Psychologist" means a licensed psychologist, as defined by~~
41 ~~K.S.A. 74-5302, and amendments thereto.~~

42 ~~(j) "Qualified mental health professional" means a physician or~~
43 ~~psychologist who is employed by a participating mental health center or~~

1 who is providing services as a physician or psychologist under a contract
2 with a participating mental health center, a licensed master's level
3 psychologist, a licensed clinical psychotherapist, a licensed marriage and
4 family therapist, a licensed clinical marriage and family therapist, a
5 licensed professional counselor, a licensed clinical professional counselor,
6 a licensed specialist social worker or a licensed master social worker or a
7 registered nurse who has a specialty in psychiatric nursing, who is
8 employed by a participating mental health center and who is acting under
9 the direction of a physician or psychologist who is employed by, or under
10 contract with, a participating mental health center.

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

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

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

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

22 (5) "Registered nurse" means a person licensed as a registered
23 professional nurse by the board of nursing under K.S.A. 65-1113 through
24 65-1164, and amendments thereto.

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

26 (l) "State psychiatric hospital" means Larned state hospital,
27 Osawatomic state hospital or south central regional mental health hospital.

28 (m) "Treatment" means any service intended to promote the mental
29 health of the patient and rendered by a qualified professional, licensed or
30 certified by the state to provide such service as an independent practitioner
31 or under the supervision of such practitioner.

32 (n) "Treatment facility" means any mental health center or clinic,
33 psychiatric unit of a medical care facility, state psychiatric hospital,
34 psychologist, physician or other institution or person authorized or
35 licensed by law to provide either inpatient or outpatient treatment to any
36 patient.

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

39 **Sec. 3. K.S.A. 59-2983 is hereby amended to read as follows: 59-**
40 **2983. (a) Nothing in this act shall be construed to apply to any person**
41 **alleged or thought to be a mentally ill person subject to involuntary**
42 **commitment for care and treatment under this act who is in custody on a**
43 **criminal charge, except with the consent of either the prosecuting**

1 **attorney or trial court.**

2 (b) (1) During an involuntary commitment proceeding initiated
3 pursuant to article 33 of chapter 22 of the Kansas Statutes Annotated, and
4 amendments thereto, the court shall consider the totality of the
5 circumstances, including, but not limited to, prior convictions or
6 adjudications, pending crimes allegedly committed by the criminal
7 defendant and any presumption provided by paragraph (2).

8 (2) If such criminal defendant is charged with an off-grid or nondrug
9 severity level 1 through 3 felony or a violation of K.S.A. 21-3504, 21-3511
10 or 21-3719, 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 paragraph, there shall be a
13 presumption that such criminal defendant is likely to cause harm to self or
14 others whenever the court is required to determine whether a criminal
15 defendant is a mentally ill person subject to involuntary commitment for
16 care and treatment under this act.

17 (3) A criminal defendant shall not be discharged from an involuntary
18 commitment initiated pursuant to article 33 of chapter 22 of the Kansas
19 Statutes Annotated, and amendments thereto, without the court conducting
20 a hearing in accordance with this section and K.S.A. 59-2965(d), and
21 amendments thereto, to determine whether such criminal defendant
22 remains a mentally ill person subject to involuntary commitment for care
23 and treatment under this act.

24 Sec. 4. ~~K.S.A. 22-3303 and, 22-3305 and K.S.A. 2025 Supp. 59-2946~~
25 **59-2983** are hereby repealed.

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