

2023 Kansas Statutes

59-29a05. Filing of petition; determination of probable cause; person taken into custody; filing of protective orders; hearing, notice and opportunity to appear, limitations; rights of person named in petition; evaluation; procedure for appearance of person confined to correctional facility; limitation on certain rights. (a) Upon filing of a petition under K.S.A. 59-29a04, and amendments thereto, the court shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the court shall:

(1) Direct that the person be taken into custody and detained in the county jail until such time as a determination is made that the person is a sexually violent predator subject to commitment under the Kansas sexually violent predator act, unless the person is subject to secure confinement at a correctional facility operated by the secretary of corrections. When the person is no longer subject to secure confinement at a correctional facility operated by the secretary of corrections, the court shall direct that the sheriff of the county where the petition is filed, or the sheriff's lawful designee, transport the person to the county jail and detain the person in the county jail until such time as a determination is made that the person is a sexually violent predator subject to commitment under the Kansas sexually violent predator act; and

(2) file a protective order permitting disclosures of protected health information to the parties, their counsel, evaluators, experts and others necessary to the litigation during the course of the proceedings subject to the Kansas sexually violent predator act.

(b) As soon as reasonably practicable or agreed upon by the parties after the filing of a petition under K.S.A. 59-29a04, and amendments thereto, the court shall order that the person named in the petition be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. At this hearing the court shall:

(1) Verify the person's identity; and

(2) determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) At the probable cause hearing as provided in subsection (b), the person shall have the following rights in addition to the rights previously specified:

(1) To be represented by counsel;

(2) to present evidence on such person's behalf;

(3) to cross-examine witnesses who testify against such person; and

(4) to view and copy all petitions and reports in the court file.

(d) If the probable cause determination is made, the court shall order that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The evaluation ordered by the court shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

(e) The person conducting the evaluation ordered by the court pursuant to this section shall notify the person being evaluated of the following:

(1) The nature and purpose of the evaluation; and

(2) that the evaluation will not be confidential and that any statements made by the person and any conclusions drawn by the evaluator, will be disclosed to the court, the person's attorney, the prosecutor and the trier of fact at any proceeding conducted under the Kansas sexually violent predator act.

(f) When a proceeding under the Kansas sexually violent predator act is required to be conducted by the court and the person involved in the proceeding remains subject to secure confinement at a correctional facility operated by the secretary of corrections, the court may secure the person's attendance at the proceeding by directing the sheriff of the county where the proceeding will be held, or the sheriff's lawful designee, to take the person into the sheriff's physical custody. The sheriff may detain such person in the county jail for such time deemed reasonable by the sheriff and the secretary of corrections to secure the person's attendance at the proceeding.

(g) Nothing in this section shall be construed to give a person:

(1) The right to appear at a proceeding under the Kansas sexually violent predator act absent a court order; or

(2) any right whatsoever in the amount of time the person is detained in the county jail to secure the person's attendance at a proceeding under the Kansas sexually violent predator act.

History: L. 1994, ch. 316, § 5; L. 1995, ch. 193, § 4; L. 2012, ch. 59, § 1; L. 2015, ch. 95, § 5; L. 2022, ch. 47, § 3; July 1.