

HOUSE BILL No. 2022

By Committee on Corrections and Juvenile Justice

1-18

1 AN ACT concerning criminal procedure; relating to persons acquitted or
2 verdict of not guilty of special question; relating to venue; amending
3 K.S.A. 2010 Supp. 22-3428 and repealing the existing section.
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 22-3428 is hereby amended to read as
7 follows: 22-3428. (1) (a) When a defendant is acquitted and the jury
8 answers in the affirmative to the special question asked pursuant to
9 K.S.A. 22-3221, and amendments thereto, the defendant shall be
10 committed to the state security hospital for safekeeping and treatment and
11 the court shall notify the secretary of corrections for the purpose of
12 providing victim notification. A finding of not guilty and the jury
13 answering in the affirmative to the special question asked pursuant to
14 K.S.A. 22-3221, and amendments thereto, shall be prima facie evidence
15 that the acquitted defendant is presently likely to cause harm to self or
16 others.

17 (b) Within 90 days of the defendant's admission, the chief medical
18 officer of the state security hospital shall send to the court a written
19 evaluation report. Upon receipt of the report, the court shall set a hearing
20 to determine whether or not the defendant is currently a mentally ill
21 person. The hearing shall be held within 30 days after the receipt by the
22 court of the chief medical officer's report.

23 (c) The court shall give notice of the hearing to the chief medical
24 officer of the state security hospital, the district or county attorney, the
25 defendant, the defendant's attorney and the secretary of corrections for the
26 purpose of providing victim notification. The court shall inform the
27 defendant that such defendant is entitled to counsel and that counsel will
28 be appointed to represent the defendant if the defendant is not financially
29 able to employ an attorney as provided in K.S.A. 22-4503 et seq., and
30 amendments thereto. The defendant shall remain at the state security
31 hospital pending the hearing.

32 (d) At the hearing, the defendant shall have the right to present
33 evidence and cross-examine witnesses. At the conclusion of the hearing,
34 if the court finds by clear and convincing evidence that the defendant is
35 not currently a mentally ill person, the court shall dismiss the criminal
36 proceeding and discharge the defendant, otherwise the court may commit

1 the defendant to the state security hospital for treatment or may place the
2 defendant on conditional release pursuant to subsection (4). The court
3 shall notify the secretary of corrections of the outcome of the hearing for
4 the purpose of providing victim notification.

5 (2) Subject to the provisions of subsection (3):

6 (a) Whenever it appears to the chief medical officer of the state
7 security hospital that a person committed under subsection (1)(d) is not
8 likely to cause harm to other persons in a less restrictive hospital
9 environment, the officer may transfer the person to any state hospital,
10 subject to the provisions of subsection (3). At any time subsequent thereto
11 during which such person is still committed to a state hospital, if the chief
12 medical officer of that hospital finds that the person may be likely to
13 cause harm or has caused harm, to others, such officer may transfer the
14 person back to the state security hospital.

15 (b) Any person committed under subsection (1)(d) may be granted
16 conditional release or discharge as an involuntary patient.

17 (3) Before transfer of a person from the state security hospital
18 pursuant to subsection (2)(a) or conditional release or discharge of a
19 person pursuant to subsection (2)(b), the chief medical officer of the state
20 security hospital or the state hospital where the patient is under
21 commitment shall give notice to the district court of the county from
22 which the person was committed that transfer of the patient is proposed
23 or that the patient is ready for proposed conditional release or discharge.
24 Such notice shall include, but not be limited to: (a) Identification of the
25 patient; (b) the course of treatment; (c) a current assessment of the
26 defendant's mental illness; (d) recommendations for future treatment, if
27 any; and (e) recommendations regarding conditional release or discharge,
28 if any. Upon receiving notice, the district court shall order that a hearing
29 be held on the proposed transfer, conditional release or discharge. The
30 court shall give notice of the hearing to the state hospital or state security
31 hospital where the patient is under commitment, to the district or county
32 attorney of the county from which the person was originally ordered
33 committed and the secretary of corrections for the purpose of providing
34 victim notification. The court shall order the involuntary patient to
35 undergo a mental evaluation by a person designated by the court. A copy
36 of all orders of the court shall be sent to the involuntary patient and the
37 patient's attorney. The report of the court ordered mental evaluation shall
38 be given to the district or county attorney, the involuntary patient and the
39 patient's attorney at least five days prior to the hearing. The hearing shall
40 be held within 30 days after the receipt by the court of the chief medical
41 officer's notice. The involuntary patient shall remain in the state hospital
42 or state security hospital where the patient is under commitment until the
43 hearing on the proposed transfer, conditional release or discharge is to be

1 held. At the hearing, the court shall receive all relevant evidence,
2 including the written findings and recommendations of the chief medical
3 officer of the state security hospital or the state hospital where the patient
4 is under commitment, and shall determine whether the patient shall be
5 transferred to a less restrictive hospital environment or whether the
6 patient shall be conditionally released or discharged. The patient shall
7 have the right to present evidence at such hearing and to cross-examine
8 any witnesses called by the district or county attorney. At the conclusion
9 of the hearing, if the court finds by clear and convincing evidence that the
10 patient will not be likely to cause harm to self or others if transferred to a
11 less restrictive hospital environment, the court shall order the patient
12 transferred. If the court finds by clear and convincing evidence that the
13 patient is not currently a mentally ill person, the court shall order the
14 patient discharged or conditionally released; otherwise, the court shall
15 order the patient to remain in the state security hospital or state hospital
16 where the patient is under commitment. If the court orders the conditional
17 release of the patient in accordance with subsection (4), the court may
18 order as an additional condition to the release that the patient continue to
19 take prescribed medication and report as directed to a person licensed to
20 practice medicine and surgery to determine whether or not the patient is
21 taking the medication or that the patient continue to receive periodic
22 psychiatric or psychological treatment. The court shall notify the
23 secretary of corrections of the outcome of the hearing for the purpose of
24 providing victim notification.

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

1 In all cases of conditional release the court shall: (a) Order that the patient
2 be placed under the temporary supervision of district court probation and
3 parole services, community treatment facility or any appropriate private
4 agency; and (b) require as a condition precedent to the release that the
5 patient agree in writing to waive extradition in the event a warrant is
6 issued pursuant to K.S.A. 22-3428b, and amendments thereto.

7 (5) At any time during the conditional release period, a conditionally
8 released patient, through the patient's attorney, or the county or district
9 attorney of the county in which the district court having venue is located
10 may file a motion for modification of the conditions of release, and the
11 court shall hold an evidentiary hearing on the motion within 15 days of its
12 filing. The court shall give notice of the time for the hearing to the patient
13 and the county or district attorney. If the court finds from the evidence at
14 the hearing that the conditional provisions of release should be modified
15 or vacated, it shall so order. If at any time during the transitional period
16 the designated medical officer or supervisory personnel or the treatment
17 facility informs the court that the patient is not satisfactorily complying
18 with the provisions of the conditional release, the court, after a hearing
19 for which notice has been given to the county or district attorney and the
20 patient, may make orders: (a) For additional conditions of release
21 designed to effect the ends of the reentry program, (b) requiring the
22 county or district attorney to file a petition to determine whether the
23 patient is a mentally ill person as provided in K.S.A. 59-2957, and
24 amendments thereto, or (c) requiring that the patient be committed to the
25 state security hospital or any state hospital. In cases where a petition is
26 ordered to be filed, the court shall proceed to hear and determine the
27 petition pursuant to the care and treatment act for mentally ill persons and
28 that act shall apply to all subsequent proceedings. If a patient is
29 committed to any state hospital pursuant to this act, the secretary of social
30 and rehabilitation services shall notify the secretary of corrections for the
31 purpose of providing victim notification. The costs of all proceedings, the
32 mental evaluation and the reentry program authorized by this section shall
33 be paid by the county from which the person was committed.

34 (6) In any case in which the defense that the defendant lacked the
35 required mental state pursuant to K.S.A. 22-3220, and amendments
36 thereto, is relied on, the court shall instruct the jury on the substance of
37 this section.

38 (7) As used in this section and K.S.A. 22-3428a, and amendments
39 thereto:

40 (a) "Likely to cause harm to self or others" means that the person is
41 likely, in the reasonably foreseeable future, to cause substantial physical
42 injury or physical abuse to self or others or substantial damage to
43 another's property, or evidenced by behavior causing, attempting or

- 1 threatening such injury, abuse or neglect.
- 2 (b) "Mentally ill person" means any person who:
- 3 (A) Is suffering from a severe mental disorder to the extent that such
- 4 person is in need of treatment; and
- 5 (B) is likely to cause harm to self or others.
- 6 (c) "Treatment facility" means any mental health center or clinic,
- 7 psychiatric unit of a medical care facility, psychologist, physician or other
- 8 institution or individual authorized or licensed by law to provide either
- 9 inpatient or outpatient treatment to any patient.
- 10 Sec. 2. K.S.A. 2010 Supp. 22-3428 is hereby repealed.
- 11 Sec. 3. This act shall take effect and be in force from and after its
- 12 publication in the statute book.
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