

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2549

By Committee on Health and Human Services

1-25

1 AN ACT concerning mental health services; determinations of  
2 competency; commitment for treatment; Larned state hospital and  
3 Osawatomie state hospital catchment areas; amending K.S.A. 2017  
4 Supp. 22-3302; **and** 22-3303 ~~and 39-1602~~ and repealing the existing  
5 sections.  
6

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

8 Section 1. K.S.A. 2017 Supp. 22-3302 is hereby amended to read as  
9 follows: 22-3302. (1) At any time after the defendant has been charged  
10 with a crime and before pronouncement of sentence, the defendant, the  
11 defendant's counsel or the prosecuting attorney may request a  
12 determination of the defendant's competency to stand trial. If, upon the  
13 request of either party or upon the judge's own knowledge and  
14 observation, the judge before whom the case is pending finds that there is  
15 reason to believe that the defendant is incompetent to stand trial the  
16 proceedings shall be suspended and a hearing conducted to determine the  
17 competency of the defendant.

18 (2) If the defendant is charged with a felony, the hearing to determine  
19 the competency of the defendant shall be conducted by a district judge.

20 (3) (A) The court shall determine the issue of competency and may  
21 impanel a jury of six persons to assist in making the determination. The  
22 court may order a psychiatric or psychological examination of the  
23 defendant. To facilitate the examination, the court may: (a) ~~If the~~  
24 ~~defendant is charged with a felony,~~ Commit the defendant to the state  
25 security hospital or any *appropriate state, county* ~~or,~~ private institution *or*  
26 *facility* for examination and report to the court, ~~or, if the defendant is~~  
27 ~~charged with a misdemeanor, commit the defendant to any appropriate~~  
28 ~~state, county or private institution for examination and report to the court,~~  
29 except that the court shall not commit the defendant to the state security  
30 hospital or any other state institution unless, prior to such commitment, the  
31 director of a local county or private institution recommends to the court  
32 and to the secretary ~~of social and rehabilitation~~ *for aging and disability*  
33 *services* that examination of the defendant should be performed at a state  
34 institution; (b) designate any appropriate psychiatric or psychological  
35 clinic, mental health center or other psychiatric or psychological facility to  
36 conduct the examination while the defendant is in jail or on pretrial

1 release; or (c) appoint two qualified licensed physicians or licensed  
2 psychologists, or one of each, to examine the defendant and report to the  
3 court.

4 (B) If the court commits the defendant to an institution *or facility* for  
5 the examination, the commitment shall be for ~~not more than a period~~ *not*  
6 *to exceed* 60 days or until the examination is completed, whichever is the  
7 shorter period of time. No statement made by the defendant in the course  
8 of any examination provided for by this section, whether or not the  
9 defendant consents to the examination, shall be admitted in evidence  
10 against the defendant in any criminal proceeding.

11 (C) Upon notification of the court that a defendant committed for  
12 psychiatric or psychological examination under this subsection has been  
13 found competent to stand trial, the court shall order that the defendant be  
14 returned ~~not~~ *no* later than seven days after receipt of the notice for  
15 proceedings under this section. If the defendant is not returned within that  
16 time, the county in which the proceedings will be held shall pay the costs  
17 of maintaining the defendant at the institution or facility for the period of  
18 time the defendant remains at the institution or facility in excess of the  
19 seven-day period.

20 (4) If the defendant is found to be competent, the proceedings which  
21 have been suspended shall be resumed. If the proceedings were suspended  
22 before or during the preliminary examination, the judge who conducted the  
23 competency hearing may conduct a preliminary examination or, if a  
24 district magistrate judge was conducting the proceedings prior to the  
25 competency hearing, the judge who conducted the competency hearing  
26 may order the preliminary examination to be heard by a district magistrate  
27 judge.

28 (5) If the defendant is found to be incompetent to stand trial, the court  
29 shall proceed in accordance with K.S.A. 22-3303, and amendments  
30 thereto.

31 (6) If proceedings are suspended and a hearing to determine the  
32 defendant's competency is ordered after the defendant is in jeopardy, the  
33 court may either order a recess or declare a mistrial.

34 (7) The defendant shall be present personally at all proceedings under  
35 this section.

36 Sec. 2. K.S.A. 2017 Supp. 22-3303 is hereby amended to read as  
37 follows: 22-3303. (1) A defendant who is charged with a ~~felony~~ *crime* and  
38 is found to be incompetent to stand trial shall be committed for evaluation  
39 and treatment to ~~the state security hospital or any appropriate state, county~~  
40 ~~or, private institution or facility.~~ *A defendant who is charged with a*  
41 ~~misdemeanor and is found to be incompetent to stand trial shall be~~  
42 ~~committed for evaluation and treatment to any appropriate state, county or~~  
43 ~~private institution.~~ At the time of such commitment the institution of

1 commitment shall notify the county or district attorney of the county in  
2 which the criminal proceedings are pending for the purpose of providing  
3 victim notification. Any such commitment shall be for a period of not to  
4 exceed 90 days. Within 90 days after the defendant's commitment to such  
5 institution, the chief medical officer of such institution shall certify to the  
6 court whether the defendant has a substantial probability of attaining  
7 competency to stand trial in the foreseeable future. If such probability does  
8 exist, the court shall order the defendant to remain in an appropriate state,  
9 county ~~or~~, private institution *or facility* until the defendant attains  
10 competency to stand trial or for a period of six months from the date of the  
11 original commitment, whichever occurs first. If such probability does not  
12 exist, the court shall order the secretary for aging and disability services to  
13 commence involuntary commitment proceedings pursuant to article 29 of  
14 chapter 59 of the Kansas Statutes Annotated, and amendments thereto.  
15 When a defendant is charged with any off-grid felony, any nondrug  
16 severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-  
17 3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, ~~or subsection (b)~~  
18 ~~of K.S.A. 2017 Supp. 21-5505 (b), subsection (b) of 21-5506(b),~~  
19 ~~subsection (b) of 21-5508(b), subsection (b) of 21-5604(b) or subsection~~  
20 ~~(b) of 21-5812(b), and amendments thereto, and commitment proceedings~~  
21 ~~have commenced, for such proceeding, "mentally ill person subject to~~  
22 ~~involuntary commitment for care and treatment" means a mentally ill~~  
23 ~~person, as defined in subsection (e) of K.S.A. 59-2946(e), and~~  
24 ~~amendments thereto, who is likely to cause harm to self and others, as~~  
25 ~~defined in subsection (f)(3) of K.S.A. 59-2946(f)(3), and amendments~~  
26 ~~thereto. The other provisions of subsection (f) of K.S.A. 59-2946(f), and~~  
27 ~~amendments thereto, shall not apply.~~

28 (2) If a defendant who was found to have had a substantial  
29 probability of attaining competency to stand trial, as provided in  
30 subsection (1), has not attained competency to stand trial within six  
31 months from the date of the original commitment, the court shall order the  
32 secretary for aging and disability services to commence involuntary  
33 commitment proceedings pursuant to article 29 of chapter 59 of the Kansas  
34 Statutes Annotated, and amendments thereto. 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 subsection (b) of K.S.A. 2017 Supp. 21-5505(b),~~  
38 ~~subsection (b) of 21-5506(b), subsection (b) of 21-5508(b), subsection (b)~~  
39 ~~of 21-5604(b) or subsection (b) of 21-5812(b), and amendments thereto,~~  
40 ~~and commitment proceedings have commenced, for such proceeding,~~  
41 ~~"mentally ill person subject to involuntary commitment for care and~~  
42 ~~treatment" means a mentally ill person, as defined in subsection (e) of~~  
43 ~~K.S.A. 59-2946(e), and amendments thereto, who is likely to cause harm~~

1 to self and others, as defined in ~~subsection (f)(3) of K.S.A. 59-2946(f)(3),~~  
2 and amendments thereto. The other provisions of ~~subsection (f) of K.S.A.~~  
3 ~~59-2946(f),~~ and amendments thereto, shall not apply.

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

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

19 ~~Sec. 3.—K.S.A. 2017 Supp. 39-1602 is hereby amended to read as~~  
20 ~~follows: 39-1602. As used in K.S.A. 39-1601 through 39-1612, and~~  
21 ~~amendments thereto:~~

22 (a) ~~"Targeted population" means the population group designated by~~  
23 ~~rules and regulations of the secretary as most in need of mental health~~  
24 ~~services which are funded, in whole or in part, by state or other public~~  
25 ~~funding sources, which group shall include adults with severe and~~  
26 ~~persistent mental illness, severely emotionally disturbed children and~~  
27 ~~adolescents, and other individuals at risk of requiring institutional care.~~

28 (b) ~~"Community based mental health services" includes, but is not~~  
29 ~~limited to, evaluation and diagnosis, case management services, mental~~  
30 ~~health inpatient and outpatient services, prescription and management of~~  
31 ~~psychotropic medication, prevention, education, consultation, treatment~~  
32 ~~and rehabilitation services, twenty-four-hour emergency services, and any~~  
33 ~~facilities required therefor, which are provided within one or more local~~  
34 ~~communities in order to provide a continuum of care and support services~~  
35 ~~to enable mentally ill persons, including targeted population members, to~~  
36 ~~function outside of inpatient institutions to the extent of their capabilities.~~  
37 ~~Community based mental health services also include assistance in~~  
38 ~~securing employment services, housing services, medical and dental care,~~  
39 ~~and other support services.~~

40 (c) ~~"Mental health center" means any community mental health~~  
41 ~~center organized pursuant to the provisions of K.S.A. 19-4001 to through~~  
42 ~~19-4015, inclusive, and amendments thereto, or mental health clinic~~  
43 ~~organized pursuant to the provisions of K.S.A. 65-211 to through 65-215,~~

1 inclusive, and amendments thereto, and licensed in accordance with the  
2 provisions of K.S.A. 75-3307b, and amendments thereto.

3 (d) ~~"Secretary" means the secretary for aging and disability services.~~

4 (e) ~~"Department" means the Kansas department for aging and  
5 disability services.~~

6 (f) ~~"State psychiatric hospital" means Osawatomic state hospital,  
7 Rainbow mental health facility or Larned state hospital.~~

8 (g) ~~"Mental health reform phased program" means the program in  
9 three phases for the implementation of mental health reform in Kansas as  
10 follows:~~

11 (1) ~~The first phase covers the counties in the Osawatomic state  
12 hospital catchment area and is to commence on July 1, 1990, and is to be  
13 completed by June 30, 1994;~~

14 (2) ~~the second phase covers the counties in the Topeka state hospital  
15 catchment area and is to commence on July 1, 1992, and is to be  
16 completed by June 30, 1996; and~~

17 (3) ~~the third phase covers the counties in the Larned state hospital  
18 catchment area and is to commence on July 1, 1993, and is to be  
19 completed by June 30, 1997.~~

20 (h) ~~"Screening" means the process performed by a participating  
21 community mental health center, pursuant to a contract entered into with  
22 the secretary under K.S.A. 39-1610, and amendments thereto, to determine  
23 whether a person, under either voluntary or involuntary procedures, can be  
24 evaluated or treated, or can be both evaluated and treated, in the  
25 community or should be referred to the appropriate state psychiatric  
26 hospital for such treatment or evaluation or for both treatment and  
27 evaluation.~~

28 (i) ~~"Osawatomic state hospital catchment area" means, except as  
29 otherwise defined by rules and regulations of the secretary adopted  
30 pursuant to K.S.A. 39-1613, and amendments thereto, the area composed  
31 of the following counties: Allen, Anderson, Atchison, Bourbon, Brown,  
32 Butler, Chase, Chautauqua, Cherokee, Clay, Coffey, Cowley, Crawford,  
33 Doniphan, Douglas, Elk, Franklin, Geary, Greenwood, Jackson, Jefferson,  
34 Jewell, Johnson, Labette, Leavenworth, Linn, Lyon, Marshall, Miami,  
35 Mitchell, Montgomery, Morris, Nemaha, Neosho, Osage, Pottawatomic,  
36 Republic, Riley, Sedgwick, Shawnee, Wabaunsee, Washington, Wilson,  
37 Woodson and Wyandotte.~~

38 (j) ~~"Larned state hospital catchment area" means, except as otherwise  
39 defined by rules and regulations of the secretary adopted pursuant to  
40 K.S.A. 39-1613, and amendments thereto, the area composed of the  
41 following counties: Barber, Barton, Cheyenne, Clark, Comanche, Decatur,  
42 Dickinson, Edwards, Ellis, Ellsworth, Finney, Ford, Gove, Graham, Grant,  
43 Gray, Greeley, Hamilton, Harper, Harvey, Haskell, Hodgeman, Kearny,~~

1 ~~Kingman, Kiowa, Lane, Lincoln, Logan, Marion, McPherson, Meade,~~  
2 ~~Morton, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Rawlins, Reno,~~  
3 ~~Rice, Rooks, Rush, Russell, Saline, Scott, Seward, Sheridan, Sherman,~~  
4 ~~Smith, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wallace and~~  
5 ~~Wichita.~~

6 ~~(k) (i) "Catchment area" means the Osawatomic state hospital~~  
7 ~~catchment area or the Larned state hospital catchment area.~~

8 ~~(l) (j) "Participating mental health center" means a mental health~~  
9 ~~center which has entered into a contract with the secretary for aging and~~  
10 ~~disability services to provide screening, treatment and evaluation, court~~  
11 ~~ordered evaluation and other treatment services pursuant to the care and~~  
12 ~~treatment act for mentally ill persons, in keeping with the phased concept~~  
13 ~~of the mental health reform act.~~

14 ~~Sec. 4. 3.~~ K.S.A. 2017 Supp. 22-3302; ~~and 22-3303 and 39-1602 are~~  
15 ~~hereby repealed.~~

16 ~~Sec. 5. 4.~~ This act shall take effect and be in force from and after its  
17 ~~publication in the statute book.~~