

**HOUSE BILL No. 2010**

By Representative Highberger

1-6

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to trials; persons found not guilty by reason of mental disease or defect;  
3 jury instruction; **housing; annual hearing on continued**  
4 **commitment**; amending **K.S.A. 12-736** and K.S.A. 2022 Supp. 22-  
5 3428 and **22-3428a** and repealing the existing ~~section~~ **sections**.

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 **Section 1. K.S.A. 12-736 is hereby amended to read as follows: 12-**  
9 **736. (a) It is hereby declared to be the policy of the state of Kansas**  
10 **that persons with a disability shall not be excluded from the benefits of**  
11 **single family residential surroundings by any municipal zoning**  
12 **ordinance, resolution or regulation.**

13 **(b) For the purpose of this act:**

14 **(1) "Group home" means any dwelling occupied by not more**  
15 **than 10 persons, including eight or fewer persons with a disability who**  
16 **need not be related by blood or marriage and not to exceed two staff**  
17 **residents who need not be related by blood or marriage to each other**  
18 **or to the residents of the home, which dwelling is licensed by a**  
19 **regulatory agency of this state;**

20 **(2) "municipality" means any township, city or county located in**  
21 **Kansas;**

22 **(3) "disability" means, with respect to a person:**

23 **(A) A physical or mental impairment that substantially limits one**  
24 **or more of such person's major life activities;**

25 **(B) a record of having such an impairment; or**

26 **(C) being regarded as having such an impairment. Such term**  
27 **does not include current, illegal use of or addiction to a controlled**  
28 **substance, as defined in section 102 of the controlled substance act, 21**  
29 **U.S.C. § 802; and**

30 **(4) "licensed provider" means a person or agency who provides**  
31 **mental health services and is licensed by:**

32 **(A) The Kansas department for aging and disability services**  
33 **pursuant to K.S.A. 39-2001 et seq. or 65-425 et seq. ~~or K.S.A. 39-2001~~**  
34 **et seq., and amendments thereto; or**

35 **(B) the behavioral sciences regulatory board pursuant to K.S.A.**  
36 **74-5301 et seq. or 75-5346 et seq. ~~or 74-5301 et seq.~~, and amendments**

1 thereto; or

2 (C) the state board of healing arts pursuant to K.S.A. 65-2801 et  
3 seq., and amendments thereto.

4 (c) (1) No mentally ill person shall be eligible for placement in a  
5 group home unless such person has been evaluated by a licensed  
6 provider and such provider determines that the mentally ill person is  
7 not dangerous to others and is suitable for group-home placement. A  
8 group home shall not be a licensed provider for the purposes of  
9 evaluating or approving for placement a mentally ill person in a group  
10 home.

11 (2) No person shall be eligible for placement in a group home if  
12 such person is: (A) Assigned to a community corrections program or a  
13 diversion program; (B) on parole from a correctional institution or on  
14 probation for a felony offense; or (C) in a state mental institution  
15 following a finding of mental disease or defect excluding criminal  
16 responsibility, pursuant to K.S.A.—~~22-3220~~ and 22-3221, and  
17 amendments thereto, and K.S.A. 2022 Supp. 21-5209, and amendments  
18 thereto.

19 (d) No person shall be placed in a group home under this act  
20 unless such dwelling is licensed as a group home by the Kansas  
21 department for aging and disability services or the department of  
22 health and environment.

23 (e) No municipality shall prohibit the location of a group home in  
24 any zone or area where single family dwellings are permitted. Any  
25 zoning ordinance, resolution or regulation that prohibits the location  
26 of a group home in such zone or area or that subjects group homes to  
27 regulations not applicable to other single family dwellings in the same  
28 zone or area is invalid. Notwithstanding the provisions of this act,  
29 group homes shall be subject to all other regulations applicable to  
30 other property and buildings located in the zone or area that are  
31 imposed by any municipality through zoning ordinance, resolution or  
32 regulation, its building regulatory codes, subdivision regulations or  
33 other nondiscriminatory regulations.

34 (f) No person or entity shall contract or enter into a contract,  
35 restrictive covenant, equitable servitude or such similar restriction  
36 that would restrict group homes or their location in a manner  
37 inconsistent with the provisions of subsection (e).

38 ~~Section 1:~~ **Sec. 2.** K.S.A. 2022 Supp. 22-3428 is hereby amended to  
39 read as follows: 22-3428. (a) (1) When a defendant is acquitted and the  
40 jury answers in the affirmative to the special question asked pursuant to  
41 K.S.A. 22-3221, and amendments thereto, the defendant shall be  
42 committed to the state security hospital or an appropriate secure facility for  
43 safekeeping and treatment and the prosecuting attorney shall provide

1 victim notification. A finding of not guilty and the jury answering in the  
2 affirmative to the special question asked pursuant to K.S.A. 22-3221, and  
3 amendments thereto, shall be prima facie evidence that the acquitted  
4 defendant is presently likely to cause harm to self or others.

5 (2) Within 90 days of the defendant's admission, the chief medical  
6 officer of the state security hospital or licensed psychologist at the  
7 appropriate secure facility shall send to the court a written evaluation  
8 report. Upon receipt of the report, the court shall set a hearing to determine  
9 whether or not the defendant is currently a mentally ill person. The hearing  
10 shall be held within 30 days after the receipt by the court of the chief  
11 medical officer's report unless the court finds that exceptional  
12 circumstances warrant delay of the hearing.

13 (3) The court shall give notice of the hearing to the chief medical  
14 officer of the state security hospital or licensed psychologist at the  
15 appropriate secure facility, the prosecuting attorney, the defendant and the  
16 defendant's attorney. The prosecuting attorney shall provide victim  
17 notification. The court shall inform the defendant that such defendant is  
18 entitled to counsel and that counsel will be appointed to represent the  
19 defendant if the defendant is not financially able to employ an attorney as  
20 provided in K.S.A. 22-4503 et seq., and amendments thereto. The  
21 defendant shall remain at the state security hospital pending the hearing.

22 (4) At the hearing, the defendant shall have the right to present  
23 evidence and cross-examine witnesses. At the conclusion of the hearing, if  
24 the court finds by clear and convincing evidence that the defendant is not  
25 currently a mentally ill person, the court shall dismiss the criminal  
26 proceeding and discharge the defendant, otherwise the court may commit  
27 the defendant to the state security hospital or an appropriate secure facility  
28 for treatment or may place the defendant on conditional release pursuant to  
29 subsection (d). The prosecuting attorney shall provide victim notification  
30 regarding the outcome of the hearing.

31 (b) Subject to the provisions of subsection (c):

32 (1) Whenever it appears to the chief medical officer of the state  
33 security hospital or a licensed psychologist at the appropriate secure  
34 facility that a person committed under subsection (a)(4) is not likely to  
35 cause harm to other persons in a less restrictive hospital environment, the  
36 officer may transfer the person to any state hospital, subject to the  
37 provisions of subsection (c). At any time subsequent thereto during which  
38 such person is still committed to a state hospital, if the chief medical  
39 officer of that hospital or the licensed psychologist at the appropriate  
40 secure facility finds that the person may be likely to cause harm or has  
41 caused harm, to others, such officer may transfer the person back to the  
42 state security hospital.

43 (2) Any person committed under subsection (a)(4) may be granted

1 conditional release or discharge as an involuntary patient.

2 (c) Before transfer of a person from the state security hospital or  
3 appropriate secure facility pursuant to subsection (b)(1) or conditional  
4 release or discharge of a person pursuant to subsection (b)(2), the chief  
5 medical officer of the state security hospital or the state hospital where the  
6 patient is under commitment or the licensed psychologist at the  
7 appropriate secure facility shall give notice to the district court of the  
8 county from which the person was committed that transfer of the patient is  
9 proposed or that the patient is ready for proposed conditional release or  
10 discharge. Such notice shall include, but not be limited to: (1)  
11 Identification of the patient; (2) the course of treatment; (3) a current  
12 assessment of the defendant's mental illness; (4) recommendations for  
13 future treatment, if any; and (5) recommendations regarding conditional  
14 release or discharge, if any. Upon receiving notice, the district court shall  
15 order that a hearing be held on the proposed transfer, conditional release or  
16 discharge. The court shall give notice of the hearing to the appropriate  
17 secure facility, state hospital or state security hospital where the patient is  
18 under commitment, to the prosecuting attorney of the county from which  
19 the person was originally ordered committed. The prosecuting attorney  
20 shall provide victim notification regarding the hearing. The court shall  
21 order the involuntary patient to undergo a mental evaluation by a person  
22 designated by the court. A copy of all orders of the court shall be sent to  
23 the involuntary patient and the patient's attorney. The report of the court  
24 ordered mental evaluation shall be given to the prosecuting attorney, the  
25 involuntary patient and the patient's attorney at least seven days prior to  
26 the hearing. The hearing shall be held within 30 days after the receipt by  
27 the court of the chief medical officer's notice unless the court finds that  
28 exceptional circumstances warrant delay of the hearing. The involuntary  
29 patient shall remain in the appropriate secure facility, state hospital or state  
30 security hospital where the patient is under commitment until the hearing  
31 on the proposed transfer, conditional release or discharge is to be held. At  
32 the hearing, the court shall receive all relevant evidence, including the  
33 written findings and recommendations of the chief medical officer of the  
34 state security hospital or the state hospital or the licensed psychologist of  
35 the appropriate secure facility where the patient is under commitment, and  
36 shall determine whether the patient shall be transferred to a less restrictive  
37 hospital environment or whether the patient shall be conditionally released  
38 or discharged. The patient shall have the right to present evidence at such  
39 hearing and to cross-examine any witnesses called by the prosecuting  
40 attorney. At the conclusion of the hearing, if the court finds by clear and  
41 convincing evidence that the patient will not be likely to cause harm to self  
42 or others if transferred to a less restrictive hospital environment, the court  
43 shall order the patient transferred. If the court finds by clear and

1 convincing evidence that the patient is not currently a mentally ill person,  
2 the court shall order the patient discharged or conditionally released;  
3 otherwise, the court shall order the patient to remain in the state security  
4 hospital or state hospital where the patient is under commitment. If the  
5 court orders the conditional release of the patient in accordance with  
6 subsection (d), the court may order as an additional condition to the release  
7 that the patient continue to take prescribed medication and report as  
8 directed to a person licensed to practice medicine and surgery to determine  
9 whether or not the patient is taking the medication or that the patient  
10 continue to receive periodic psychiatric or psychological treatment. The  
11 prosecuting attorney shall notify any victims of the outcome of the  
12 hearing.

13 (d) In order to ensure the safety and welfare of a patient who is to be  
14 conditionally released and the citizenry of the state, the court may allow  
15 the patient to remain in custody at a facility under the supervision of the  
16 secretary for aging and disability services or the head of the appropriate  
17 secure facility for a period of time not to exceed 45 days in order to permit  
18 sufficient time for the secretary to prepare recommendations to the court  
19 for a suitable reentry program for the patient and allow adequate time for  
20 the prosecuting attorney to provide victim notification. The reentry  
21 program shall be specifically designed to facilitate the return of the patient  
22 to the community as a functioning, self-supporting citizen, and may  
23 include appropriate supportive provisions for assistance in establishing  
24 residency, securing gainful employment, undergoing needed vocational  
25 rehabilitation, receiving marital and family counseling, and such other  
26 outpatient services that appear beneficial. If a patient who is to be  
27 conditionally released will be residing in a county other than the county  
28 where the district court that ordered the conditional release is located, the  
29 court shall transfer venue of the case to the district court of the other  
30 county and send a copy of all of the court's records of the proceedings to  
31 the other court. In all cases of conditional release the court shall:

32 (1) Order that the patient be placed under the temporary supervision  
33 of district court probation and parole services, community treatment  
34 facility or any appropriate private agency; and

35 (2) require as a condition precedent to the release that the patient  
36 agree in writing to waive extradition in the event a warrant is issued  
37 pursuant to K.S.A. 22-3428b, and amendments thereto.

38 (e) At any time during the conditional release period, a conditionally  
39 released patient, through the patient's attorney, or the prosecuting attorney  
40 of the county where the district court having venue is located may file a  
41 motion for modification of the conditions of release, and the court shall  
42 hold an evidentiary hearing on the motion within 14 days of its filing. The  
43 court shall give notice of the time for the hearing to the patient and the

1 prosecuting attorney. If the court finds from the evidence at the hearing  
2 that the conditional provisions of release should be modified or vacated, it  
3 shall so order. If at any time during the transitional period the designated  
4 medical officer or supervisory personnel or the treatment facility informs  
5 the court that the patient is not satisfactorily complying with the provisions  
6 of the conditional release, the court, after a hearing for which notice has  
7 been given to the prosecuting attorney and the patient, may make orders:  
8 (1) For additional conditions of release designed to effect the ends of the  
9 reentry program; (2) requiring the prosecuting attorney to file a petition to  
10 determine whether the patient is a mentally ill person as provided in  
11 K.S.A. 59-2957, and amendments thereto; or (3) requiring that the patient  
12 be committed to the appropriate secure facility, state security hospital or  
13 any state hospital. In cases where a petition is ordered to be filed, the court  
14 shall proceed to hear and determine the petition pursuant to the care and  
15 treatment act for mentally ill persons and that act shall apply to all  
16 subsequent proceedings. If a patient is committed to any state hospital  
17 pursuant to this act the prosecuting attorney shall provide victim  
18 notification. The costs of all proceedings, the mental evaluation and the  
19 reentry program authorized by this section shall be paid by the county  
20 from which the person was committed.

21 (f) In any case in which the defense that the defendant lacked the  
22 required mental state pursuant to K.S.A. ~~22-3220~~ *2022 Supp. 21-5209*, and  
23 amendments thereto, is relied on, the court shall instruct the jury on the  
24 substance of this section.

25 (g) As used in this section and K.S.A. 22-3428a, and amendments  
26 thereto:

27 (1) "Likely to cause harm to self or others" means that the person is  
28 likely, in the reasonably foreseeable future, to cause substantial physical  
29 injury or physical abuse to self or others or substantial damage to another's  
30 property, or evidenced by behavior causing, attempting or threatening such  
31 injury, abuse or neglect.

32 (2) "Mentally ill person" means any person who:

33 (A) Is suffering from a severe mental disorder to the extent that such  
34 person is in need of treatment; and

35 (B) is likely to cause harm to self or others.

36 (3) "Treatment facility" means any mental health center or clinic,  
37 psychiatric unit of a medical care facility, psychologist, physician or other  
38 institution or individual authorized or licensed by law to provide either  
39 inpatient or outpatient treatment to any patient.

40 **Sec. 3. K.S.A. 2022 Supp. 22-3428a is hereby amended to read as**  
41 **follows: 22-3428a.-(1) (a) Any person found not guilty, pursuant to**  
42 **K.S.A. ~~22-3220~~ and 22-3221, and amendments thereto, and K.S.A. 2022**  
43 ***Supp. 21-5209, and amendments thereto, who remains in the state***

1 security hospital or a state hospital for over one year pursuant to a  
2 commitment under K.S.A. 22-3428, and amendments thereto, shall be  
3 entitled annually to request a hearing to determine whether or not the  
4 person continues to be a mentally ill person. The request shall be  
5 made in writing to the district court of the county where the person is  
6 hospitalized and shall be signed by the committed person or the  
7 person's counsel. When the request is filed, the court shall give notice  
8 of the request to: ~~(a)~~ (1) The county or district attorney of the county  
9 in which the person was originally ordered committed; and ~~(b)~~ (2) the  
10 chief medical officer of the state security hospital or state hospital  
11 where the person is committed. The chief medical officer receiving the  
12 notice, or the officer's designee, shall conduct a mental examination of  
13 the person and shall send to the district court of the county where the  
14 person is hospitalized and to the county or district attorney of the  
15 county in which the person was originally ordered committed a report  
16 of the examination within 21 days from the date when notice from the  
17 court was received. Within 14 days after receiving the report of the  
18 examination, the county or district attorney receiving it may file a  
19 motion with the district court that gave the notice, requesting the  
20 court to change the venue of the hearing to the district court of the  
21 county in which the person was originally committed, or the court that  
22 gave the notice on its own motion may change the venue of the hearing  
23 to the district court of the county in which the person was originally  
24 committed. Upon receipt of that motion and the report of the mental  
25 examination or upon the court's own motion, the court shall transfer  
26 the hearing to the district court specified in the motion and send a  
27 copy of the court's records of the proceedings to that court.

28 ~~(2)~~(b) After the time in which a change of venue may be requested  
29 has elapsed, the court having venue shall set a date for the hearing,  
30 giving notice thereof to the county or district attorney of the county,  
31 the committed person and the person's counsel. The county or district  
32 attorney shall provide victim notification. If there is no counsel of  
33 record, the court shall appoint a counsel for the committed person.  
34 The committed person shall have the right to procure, at the person's  
35 own expense, a mental examination by a physician or licensed  
36 psychologist of the person's own choosing. If a committed person is  
37 financially unable to procure such an examination, the aid to indigent  
38 defendants provisions of article 45 of chapter 22 of the Kansas  
39 Statutes Annotated, and amendments thereto, shall be applicable to  
40 that person. A committed person requesting a mental examination  
41 pursuant to K.S.A. 22-4508, and amendments thereto, may request a  
42 physician or licensed psychologist of the person's own choosing and  
43 the court shall request the physician or licensed psychologist to

1 **provide an estimate of the cost of the examination. If the physician or**  
2 **licensed psychologist agrees to accept compensation in an amount in**  
3 **accordance with the compensation standards set by the board of**  
4 **supervisors of panels to aid indigent defendants, the judge shall**  
5 **appoint the requested physician or licensed psychologist; otherwise,**  
6 **the court shall designate a physician or licensed psychologist to**  
7 **conduct the examination. Copies of each mental examination of the**  
8 **committed person shall be filed with the court at least seven days prior**  
9 **to the hearing and shall be supplied to the county or district attorney**  
10 **receiving notice pursuant to this section and the committed person's**  
11 **counsel.**

12 ~~(3)(c)~~ At the hearing the committed person shall have the right to  
13 present evidence and cross-examine the witnesses. The court shall receive  
14 all relevant evidence, including the written findings and recommendations  
15 of the chief medical officer of the state security hospital or state hospital  
16 where the person is under commitment, and shall determine whether the  
17 committed person continues to be a mentally ill person. At the hearing the  
18 court may make any order that a court is empowered to make pursuant to  
19 ~~subsections (3), (4) and (5) of K.S.A. 22-3428(c), (d) and (e), and~~  
20 ~~amendments thereto.~~ If the court finds by clear and convincing evidence  
21 the committed person is not a mentally ill person, the court shall order the  
22 person discharged; otherwise, the person shall remain committed or be  
23 conditionally released. The county or district attorney shall provide victim  
24 notification regarding the outcome of the hearing.

25 ~~(4)(d)~~ **Costs of a hearing held pursuant to this section shall be**  
26 **assessed against and paid by the county in which the person was**  
27 **originally ordered committed.**

28 ~~Sec. 2- 4. K.S.A. 12-736 and K.S.A. 2022 Supp. 22-3428-is and 22-~~  
29 ~~3428a are hereby repealed.~~

30 ~~Sec. 3- 5.~~ This act shall take effect and be in force from and after its  
31 publication in the statute book.