

2023 Kansas Statutes

22-3428. Persons found not guilty by jury by reason of mental disease or defect; commitment to state security hospital or an appropriate secure facility; determination of whether person is a mentally ill person, notice and hearing; procedure for transfer, release or discharge, standards, notice and hearing; victim notification. (a) (1) When a defendant is acquitted and the jury answers in the affirmative to the special question asked pursuant to K.S.A. 22-3221, and amendments thereto, the defendant shall be committed to the state security hospital or an appropriate secure facility for safekeeping and treatment and the prosecuting attorney shall provide victim notification. A finding of not guilty and the jury answering in the affirmative to the special question asked pursuant to K.S.A. 22-3221, and amendments thereto, shall be prima facie evidence that the acquitted defendant is presently likely to cause harm to self or others.

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

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

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

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

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

(2) Any person committed under subsection (a)(4) may be granted conditional release or discharge as an involuntary patient.

(c) Before transfer of a person from the state security hospital or appropriate secure facility pursuant to subsection (b)(1) or conditional release or discharge of a person pursuant to subsection (b)(2), the chief medical officer of the state security hospital or the state hospital where the patient is under commitment or the licensed psychologist at the appropriate secure facility shall give notice to the district court of the county from which the person was committed that transfer of the patient is proposed or that the patient is ready for proposed conditional release or discharge. Such notice shall include, but not be limited to: (1) Identification of the patient; (2) the course of treatment; (3) a current assessment of the defendant's mental illness; (4) recommendations for future treatment, if any; and (5) recommendations regarding conditional release or discharge, if any. Upon receiving notice, the district court shall

order that a hearing be held on the proposed transfer, conditional release or discharge. The court shall give notice of the hearing to the appropriate secure facility, state hospital or state security hospital where the patient is under commitment, to the prosecuting attorney of the county from which the person was originally ordered committed. The prosecuting attorney shall provide victim notification regarding the hearing. The court shall order the involuntary patient to undergo a mental evaluation by a person designated by the court. A copy of all orders of the court shall be sent to the involuntary patient and the patient's attorney. The report of the court ordered mental evaluation shall be given to the prosecuting attorney, the involuntary patient and the patient's attorney at least seven days prior to the hearing. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice unless the court finds that exceptional circumstances warrant delay of the hearing. The involuntary patient shall remain in the appropriate secure facility, state hospital or state security hospital where the patient is under commitment until the hearing on the proposed transfer, conditional release or discharge is to be held. At the hearing, the court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or the state hospital or the licensed psychologist of the appropriate secure facility where the patient is under commitment, and shall determine whether the patient shall be transferred to a less restrictive hospital environment or whether the patient shall be conditionally released or discharged. The patient shall have the right to present evidence at such hearing and to cross-examine any witnesses called by the prosecuting attorney. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the patient will not be likely to cause harm to self or others if transferred to a less restrictive hospital environment, the court shall order the patient transferred. If the court finds by clear and convincing evidence that the patient is not currently a mentally ill person, the court shall order the patient discharged or conditionally released; otherwise, the court shall order the patient to remain in the state security hospital or state hospital where the patient is under commitment. If the court orders the conditional release of the patient in accordance with subsection (d), the court may order as an additional condition to the release that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery to determine whether or not the patient is taking the medication or that the patient continue to receive periodic psychiatric or psychological treatment. The prosecuting attorney shall notify any victims of the outcome of the hearing.

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

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

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

(e) At any time during the conditional release period, a conditionally released

patient, through the patient's attorney, or the prosecuting attorney of the county where the district court having venue is located may file a motion for modification of the conditions of release, and the court shall hold an evidentiary hearing on the motion within 14 days of its filing. The court shall give notice of the time for the hearing to the patient and the prosecuting attorney. If the court finds from the evidence at the hearing that the conditional provisions of release should be modified or vacated, it shall so order. If at any time during the transitional period the designated medical officer or supervisory personnel or the treatment facility informs the court that the patient is not satisfactorily complying with the provisions of the conditional release, the court, after a hearing for which notice has been given to the prosecuting attorney and the patient, may make orders: (1) For additional conditions of release designed to effect the ends of the reentry program; (2) requiring the prosecuting attorney to file a petition to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2957, and amendments thereto; or (3) requiring that the patient be committed to the appropriate secure facility, state security hospital or any state hospital. In cases where a petition is ordered to be filed, the court shall proceed to hear and determine the petition pursuant to the care and treatment act for mentally ill persons and that act shall apply to all subsequent proceedings. If a patient is committed to any state hospital pursuant to this act the prosecuting attorney shall provide victim notification. The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the person was committed.

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

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

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

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

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

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

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

History: L. 1970, ch. 129, § 22-3428; L. 1971, ch. 117, § 1; L. 1975, ch. 200, § 1; L. 1976, ch. 163, § 23; L. 1978, ch. 129, § 1; L. 1979, ch. 97, § 1; L. 1980, ch. 105, § 1; L. 1982, ch. 148, § 2; L. 1986, ch. 211, § 28; L. 1989, ch. 101, § 1; L. 1992, ch. 309, § 3; L. 1993, ch. 247, § 2; L. 1995, ch. 251, § 28; L. 1996, ch. 167, § 45; L. 1996, ch. 246, § 1; L. 2010, ch. 61, § 4; L. 2011, ch. 91, § 17; L. 2014, ch. 5, § 3; L. 2022, ch. 76, § 10; L. 2023, ch. 93, § 5; July 1.