

HOUSE BILL No. 2562

By Committee on Judiciary

2-3

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to release of incompetent defendants.
3

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

5 Section 1. (a) If a defendant who has been involuntarily committed is
6 to be discharged pursuant to subsection (2) of K.S.A. 22-3305, and
7 amendments thereto, the head of the treatment facility shall send a written
8 evaluation report to the court. Upon receipt of the report, the court shall set
9 a hearing to determine whether or not the defendant is likely to cause harm
10 to self or others. The court shall hold a hearing within 30 days of receipt of
11 such report.

12 (b) The court shall give notice of the hearing to the district or county
13 attorney, the defendant, the defendant's attorney, the head of the treatment
14 facility and the secretary of corrections for the purpose of providing victim
15 notification. The court shall inform the defendant that such defendant is
16 entitled to counsel and that counsel will be appointed to represent the
17 defendant if such defendant is not financially able to employ an attorney as
18 provided in K.S.A. 22-4503 et seq., and amendments thereto. The
19 defendant shall remain at the treatment facility pending the hearing.

20 (c) At the hearing, the defendant shall have the right to present
21 evidence and cross-examine witnesses. At the conclusion of the hearing, if
22 the court finds by clear and convincing evidence that the defendant is not
23 likely to cause harm to self or others, the court shall dismiss the criminal
24 proceeding and discharge the defendant; otherwise, the court may commit
25 the defendant to a treatment facility for treatment or may place the
26 defendant on conditional release pursuant to this section. The court shall
27 notify the secretary of corrections of the outcome of the hearing for the
28 purpose of providing victim notification.

29 (d) Prior to discharge of a defendant pursuant to subsection (2) of
30 K.S.A. 22-3305, and amendments thereto, the head of the treatment
31 facility where the defendant is under commitment shall give notice to the
32 district court of the county from which the person was committed that the
33 defendant is ready for proposed conditional release or discharge. Such
34 notice shall include, but not be limited to: (1) Identification of the
35 defendant; (2) the course of treatment; (3) a current assessment of the
36 defendant's likelihood to cause harm to self or others; (4)

1 recommendations for future treatment, if any; and (5) recommendations
2 regarding conditional release or discharge, if any. Upon receiving notice,
3 the district court shall order that a hearing be held on the proposed
4 conditional release or discharge. The court shall give notice of the hearing
5 to the treatment facility where the defendant is under commitment, to the
6 district or county attorney of the county from which the defendant was
7 originally ordered committed, and to the secretary of corrections for the
8 purpose of providing victim notification. The court shall order the
9 involuntarily committed defendant to undergo a mental evaluation by an
10 evaluator designated by the court. A copy of all orders of the court shall be
11 sent to the defendant and the defendant's attorney. The report of the court-
12 ordered mental evaluation shall be given to the district or county attorney,
13 the defendant and the defendant's attorney at least seven days prior to the
14 hearing. At the hearing, the court shall receive all relevant evidence,
15 including the written findings and recommendations of the head of the
16 treatment facility where the defendant is under commitment, and shall
17 determine whether the defendant shall be conditionally released or
18 discharged. The defendant shall have the right to present evidence at such
19 hearing and to cross-examine any witnesses called by the district or county
20 attorney. At the conclusion of the hearing, if the court finds by clear and
21 convincing evidence that the defendant is not likely to cause harm to self
22 or others, the court shall order the defendant discharged or conditionally
23 released; otherwise, the court shall order the defendant to remain in the
24 treatment facility where the defendant is under commitment. If the court
25 orders the conditional release of the defendant, the court may order as an
26 additional condition that the defendant continue to take prescribed
27 medication and report as directed to a person licensed to practice medicine
28 and surgery to determine if the defendant is taking the medication or if the
29 defendant should continue to receive periodic psychiatric or psychological
30 treatment. The court shall notify the secretary of corrections of the
31 outcome of the hearing for the purpose of providing victim notification.

32 (e) In order to ensure the safety and welfare of the citizenry of the
33 state and of a defendant who is to be conditionally released, the court may
34 allow the defendant to remain in custody at a facility under the supervision
35 of the secretary for children and families for a period of time not to exceed
36 45 days in order to permit sufficient time for the secretary to prepare
37 recommendations to the court for a suitable reentry program for the
38 defendant and allow adequate time for the secretary of corrections to
39 provide victim notification. The reentry program shall be specifically
40 designed to facilitate the return of the defendant to the community as a
41 functioning, self-supporting citizen, and may include appropriate
42 supportive provisions for assistance in establishing residency, securing
43 gainful employment, undergoing needed vocational rehabilitation,

1 receiving marital and family counseling and such other outpatient services
2 that appear beneficial. If a defendant who is to be conditionally released
3 will be residing in a county other than the county where the district court
4 that ordered the conditional release is located, the court shall transfer
5 venue of the case to the district court of the other county and send a copy
6 of all of the court's records of the proceedings to the other court. In all
7 cases of conditional release the court shall: (1) Order that the defendant be
8 placed under the temporary supervision of district court probation and
9 parole services, a community treatment facility or any appropriate private
10 agency; and (2) require as a condition precedent to the release that the
11 defendant agree in writing to waive extradition in the event a warrant is
12 issued pursuant to K.S.A. 22-3428b, and amendments thereto.

13 (f) (1) At any time during the conditional release period, a
14 conditionally released defendant, through the defendant's attorney, or the
15 county or district attorney of the county in which the district court having
16 venue is located, may file a motion for modification of the conditions of
17 release, and the court shall hold an evidentiary hearing on such motion
18 within 14 days of its filing. The court shall give notice of the time for the
19 hearing to the defendant and the county or district attorney. If the court
20 finds from the evidence at the hearing that the conditions of release should
21 be modified or vacated, it shall be so ordered.

22 (2) If at any time during the conditional release the designated
23 medical officer or supervisory personnel or the treatment facility informs
24 the court that the defendant is not satisfactorily complying with the
25 provisions of the conditional release, the court, after a hearing for which
26 notice has been given to the county or district attorney and the defendant,
27 may make orders:

28 (A) For additional conditions of release designed to effect the ends of
29 the reentry program;

30 (B) requiring the county or district attorney to file a petition to
31 determine whether the defendant is a mentally ill person as provided in
32 K.S.A. 59-2957, and amendments thereto; or

33 (C) requiring that the defendant be committed to the state security
34 hospital or any state hospital.

35 (3) In cases where the court orders a petition to be filed as provided
36 in K.S.A. 59-2957, and amendments thereto, the court shall proceed to
37 hear and determine the petition pursuant to the care and treatment act for
38 mentally ill persons and that act shall apply to all subsequent proceedings.

39 (4) If a defendant is committed to any state hospital pursuant to this
40 section, the secretary for children and families shall notify the secretary of
41 corrections for the purpose of providing victim notification.

42 (g) The costs of all proceedings, the mental evaluation and the reentry
43 program authorized by this section shall be paid by the county from which

1 the defendant was committed.

2 (h) As used in this section:

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

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

12 Sec. 2. This act shall take effect and be in force from and after its
13 publication in the statute book.