

59-2965. Trial upon the petition; procedure. (a) Trial upon the petition shall be held at the time and place specified in the court's order issued pursuant to subsection (a) of K.S.A. 59-2960 and amendments thereto unless a continuance as provided in K.S.A. 59-2960 or 59-2964 and amendments thereto, has been granted. The hearing shall be held to the court only, unless the proposed patient, at least 4 days prior to the time set for the hearing, demands, in writing, a jury trial.

(b) The jury, if one is demanded, shall consist of 6 persons. The jury panel shall be selected as provided by law. Notwithstanding the provision within K.S.A. 43-166 otherwise, a panel of prospective jurors may be assembled by the clerk upon less than 20 days notice in this circumstance. From such panel 12 qualified jurors, who have been passed for cause, shall be empaneled. Prior service as a juror in any court shall not exempt, for that reason alone, any person from jury service hereunder. From the panel so obtained, the proposed patient or the proposed patient's attorney shall strike one name; then the petitioner, or the petitioner's attorney, shall strike one name; and so on alternately until each has stricken 3 names so as to reach the jury of 6 persons. During this process, if either party neglects or refuses to aid in striking the names, the court shall strike a name on behalf of such party.

(c) The proposed patient shall be present at the hearing unless the attorney for the proposed patient requests that the proposed patient's presence be waived and the court finds the person's presence at the hearing would be injurious to their welfare. The court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the proposed patient at the hearing would be injurious to their welfare. However, if the proposed patient states in writing to the court or such person's attorney that such patient wishes to be present at the hearing, the person's presence cannot be waived. The petitioner and the proposed patient shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. All persons not necessary for the conduct of the proceedings may be excluded. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the welfare of the proposed patient. The court shall receive all relevant and material evidence which may be offered, including the testimony or written findings and recommendations of the examiner who evaluated the proposed patient pursuant to the court's order issued under K.S.A. 59-2961 and amendments thereto. Such evidence shall not be privileged for the purpose of this hearing.

(d) The rules governing evidentiary and procedural matters at hearings under this section shall be applied in a manner so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of issues with due regard to the interests of all parties.

(e) If the petitioner is not represented by counsel, the county or district attorney shall represent the petitioner, prepare all necessary papers, appear at the hearing and present such evidence as the county or district attorney shall determine to be of aid to the court in determining whether or not the proposed patient is a mentally ill person subject to involuntary commitment for care and treatment under this act.

History: L. 1996, ch. 167, § 21; Apr. 18.