

HOUSE BILL No. 2734

By Committee on Judiciary

2-9

1 AN ACT concerning the probate code; relating to the Kansas sexually
2 violent predator act; persons in the custody of the secretary for aging
3 and disability services; administrative confinement; amending K.S.A.
4 2017 Supp. 59-29a02, 59-29a07, 59-29a08, 59-29a11, 59-29a19 and
5 59-29a22 and repealing the existing sections.

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

8 Section 1. K.S.A. 2017 Supp. 59-29a02 is hereby amended to read as
9 follows: 59-29a02. As used in this act:

10 (a) "Sexually violent predator" means any person who has been
11 convicted of or charged with a sexually violent offense and who suffers
12 from a mental abnormality or personality disorder which makes the person
13 likely to engage in repeat acts of sexual violence *and who has serious*
14 *difficulty in controlling such person's dangerous behavior.*

15 (b) "Mental abnormality" means a congenital or acquired condition
16 affecting the emotional or volitional capacity which predisposes the person
17 to commit sexually violent offenses in a degree constituting such person a
18 menace to the health and safety of others.

19 (c) "Likely to engage in repeat acts of sexual violence" means the
20 person's propensity to commit acts of sexual violence is of such a degree
21 as to pose a menace to the health and safety of others.

22 (d) "Sexually motivated" means that one of the purposes for which
23 the defendant committed the crime was for the purpose of the defendant's
24 sexual gratification.

25 (e) "Sexually violent offense" means:

26 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
27 2017 Supp. 21-5503, and amendments thereto;

28 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior
29 to its repeal, or ~~subsection (a) of~~ K.S.A. 2017 Supp. 21-5506(a), and
30 amendments thereto;

31 (3) aggravated indecent liberties with a child, as defined in K.S.A.
32 21-3504, prior to its repeal, or ~~subsection (b) of~~ K.S.A. 2017 Supp. 21-
33 5506(b), and amendments thereto;

34 (4) criminal sodomy, as defined in ~~subsection (a)(2) and (a)(3) of~~
35 K.S.A. 21-3505(a)(2) and (a)(3), prior to its repeal, or ~~subsection (a)(3)~~
36 ~~and (a)(4) of~~ K.S.A. 2017 Supp. 21-5504(a)(3) and (a)(4), and

1 amendments thereto;

2 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
3 to its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5504(b), and
4 amendments thereto;

5 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510,
6 prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2017 Supp. 21-5508(a), and
7 amendments thereto;

8 (7) aggravated indecent solicitation of a child, as defined in K.S.A.
9 21-3511, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-
10 5508(b), and amendments thereto;

11 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
12 to its repeal, or K.S.A. 2017 Supp. 21-5510, and amendments thereto;

13 (9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
14 its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5505(b), and
15 amendments thereto;

16 (10) aggravated incest, as defined in K.S.A. 21-3603, prior to its
17 repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5604(b), and
18 amendments thereto;

19 (11) any conviction for a felony offense in effect at any time prior to
20 the effective date of this act, that is comparable to a sexually violent
21 offense as defined in ~~subparagraphs~~ *paragraphs* (1) through (11) or any
22 federal or other state conviction for a felony offense that under the laws of
23 this state would be a sexually violent offense as defined in this section;

24 (12) an attempt, conspiracy or criminal solicitation, as defined in
25 K.S.A. 21-3301, 21-3302 and 21-3303, prior to their repeal, or K.S.A.
26 2017 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a
27 sexually violent offense as defined in this subsection; or

28 (13) any act which either at the time of sentencing for the offense or
29 subsequently during civil commitment proceedings pursuant to this act,
30 has been determined beyond a reasonable doubt to have been sexually
31 motivated.

32 (f) "Agency with jurisdiction" means that agency which releases upon
33 lawful order or authority a person serving a sentence or term of
34 confinement and includes the department of corrections, the Kansas
35 department for aging and disability services and the prisoner review board.

36 (g) "Person" means an individual who is a potential or actual subject
37 of proceedings under this act.

38 (h) "Treatment staff" means the persons, agencies or firms employed
39 by or contracted with the secretary to provide treatment, supervision or
40 other services at the sexually violent predator facility.

41 (i) "Transitional release" means any halfway house, work release,
42 sexually violent predator treatment facility or other placement designed to
43 assist the person's adjustment and reintegration into the community ~~onee~~

1 released from commitment.

2 (j) "Secretary" means the secretary for aging and disability services.

3 (k) "*Conditional release*" means approved placement in the
4 community for a minimum of five years while under the supervision of the
5 person's court of original commitment and the secretary for aging and
6 disability services.

7 (l) "*Professional monitor*" means an individual named in the
8 conditional release treatment plan by the treatment staff to monitor the
9 person's compliance with the treatment plan while placed on conditional
10 release and who reports to the court.

11 (m) "*Progress review panel*" means individuals appointed by the
12 secretary for aging and disability services to evaluate a person's progress
13 in the sexually violent predator treatment program.

14 Sec. 2. K.S.A. 2017 Supp. 59-29a07 is hereby amended to read as
15 follows: 59-29a07. (a) The court or jury shall determine whether, beyond a
16 reasonable doubt, the person is a sexually violent predator. If such
17 determination that the person is a sexually violent predator is made by a
18 jury, such determination shall be by unanimous verdict of such jury. Such
19 determination may be appealed in the manner provided for civil cases in
20 article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments
21 thereto. If the court or jury determines that the person is a sexually violent
22 predator, the person shall be committed to the custody of the secretary for
23 aging and disability services for control, care and treatment until such time
24 as the person's mental abnormality or personality disorder has so changed
25 that the person is safe to be at large. Such control, care and treatment shall
26 be provided at a facility operated by the Kansas department for aging and
27 disability services.

28 (b) At all times, persons committed for control, care and treatment by
29 the Kansas department for aging and disability services pursuant to the
30 Kansas sexually violent predator act shall be kept in a secure facility and
31 such persons shall be segregated on different units from any other patient
32 under the supervision of the secretary for aging and disability services and
33 commencing June 1, 1995, such persons committed pursuant to the Kansas
34 sexually violent predator act shall be kept in a facility or building separate
35 from any other patient under the supervision of the secretary. The
36 ~~provisions of this subsection~~ *secure confinement restriction* shall not apply
37 to any *reintegration, transitional release or conditional release* facility or
38 ~~building utilized in any transitional release program or conditional release~~
39 ~~program.~~

40 (c) The Kansas department for aging and disability services is
41 authorized to enter into an interagency agreement with the department of
42 corrections for the confinement of such persons. Such persons who are in
43 the confinement of the secretary of corrections pursuant to an interagency

1 agreement shall be housed and managed separately from offenders in the
2 custody of the secretary of corrections, and except for occasional instances
3 of supervised incidental contact, shall be segregated from such offenders.

4 (d) If any person while committed to the custody of the secretary
5 pursuant to the Kansas sexually violent predator act shall be taken into
6 custody by any law enforcement officer as defined in K.S.A. 2017 Supp.
7 21-5111, and amendments thereto, pursuant to any parole revocation
8 proceeding or any arrest or conviction for a criminal offense of any nature,
9 upon the person's release from the custody of any law enforcement officer,
10 the person shall be returned to the custody of the secretary for further
11 treatment pursuant to the Kansas sexually violent predator act. During any
12 such period of time a person is not in the actual custody or supervision of
13 the secretary, the secretary shall be excused from the provisions of K.S.A.
14 59-29a08, and amendments thereto, with regard to providing that person
15 an annual examination, annual notice and annual report to the court, except
16 that the secretary shall give notice to the court as soon as reasonably
17 possible after the taking of the person into custody that the person is no
18 longer in treatment pursuant to the Kansas sexually violent predator act
19 and notice to the court when the person is returned to the custody of the
20 secretary for further treatment.

21 (e) If the court or jury is not satisfied beyond a reasonable doubt that
22 the person is a sexually violent predator, the court shall direct the person's
23 release.

24 (f) Upon a mistrial, the court shall direct that the person be held at an
25 appropriate secure facility, including, but not limited to, a county jail, until
26 another trial is conducted. Any subsequent trial following a mistrial shall
27 be held within 90 days of the previous trial, unless such subsequent trial is
28 continued as provided in K.S.A. 59-29a06, and amendments thereto.

29 (g) If the person charged with a sexually violent offense has been
30 found incompetent to stand trial and is about to be released pursuant to
31 K.S.A. 22-3305 and amendments thereto and such person's commitment is
32 sought pursuant to subsection (a), the court shall first hear evidence and
33 determine whether the person did commit the act or acts charged. The
34 hearing on this issue must comply with all the procedures specified in this
35 section. In addition, the rules of evidence applicable in criminal cases shall
36 apply and all constitutional rights available to defendants at criminal trials,
37 other than the right not to be tried while incompetent, shall apply. After
38 hearing evidence on this issue, the court shall make specific findings on
39 whether the person did commit the act or acts charged, the extent to which
40 the person's incompetence or developmental disability affected the
41 outcome of the hearing, including its effect on the person's ability to
42 consult with and assist counsel and to testify on such person's own behalf,
43 the extent to which the evidence could be reconstructed without the

1 assistance of the person and the strength of the prosecution's case. If after
2 the conclusion of the hearing on this issue, the court finds, beyond a
3 reasonable doubt, that the person did commit the act or acts charged, the
4 court shall enter a final order, appealable by the person, on that issue and
5 may proceed to consider whether the person should be committed pursuant
6 to this section.

7 Sec. 3. K.S.A. 2017 Supp. 59-29a08 is hereby amended to read as
8 follows: 59-29a08. (a) Each person committed under the Kansas sexually
9 violent predator act shall have a current examination of the person's mental
10 condition made once every year. The secretary shall provide the person
11 with an annual written notice of the person's right to petition the court for
12 release over the secretary's objection. The notice shall contain a waiver of
13 rights. The secretary shall also forward the annual report, as well as the
14 annual notice and waiver form, to the court that committed the person
15 under the Kansas sexually violent predator act. The court shall file the
16 notice and the report upon receipt. *The court shall forward a file-stamped*
17 *copy of the annual written notice and annual report to the secretary upon*
18 *filing.*

19 (b) The person must file a request for an annual review hearing
20 within 45 days after the date the court files the annual written notice.
21 Failure to request a hearing within 45 days pursuant to this subsection
22 waives the person's right to a hearing until the next annual report is filed
23 by the court. A contested annual review hearing for transitional release
24 shall consist of consideration about whether the person is entitled to
25 transitional release. Only a person in transitional release shall be permitted
26 to petition for conditional release. Only a person in conditional release
27 shall be permitted to petition for final discharge.

28 (c) The person may retain, or if the person is indigent and so requests
29 the court may appoint, an examiner pursuant to K.S.A. 60-235, and
30 amendments thereto, and the examiner shall have access to all available
31 records concerning the person. If the person is indigent and makes a
32 request for an examiner, the court shall determine whether the services are
33 necessary and shall determine the reasonable compensation for such
34 services. The court, before appointing an examiner, shall consider factors
35 including the person's compliance with institutional requirements and the
36 person's participation in treatment to determine whether the person's
37 progress justifies the costs of an examination. The appointment of an
38 examiner is discretionary.

39 (d) At the annual review hearing, the burden of proof shall be upon
40 the person to show probable cause to believe the person's mental
41 abnormality or personality disorder has significantly changed so that the
42 person is safe to be placed in transitional release. The report, or a copy
43 thereof, of the findings of a qualified expert shall be admissible into

1 evidence in the annual review hearing in the same manner and with the
2 same force and effect as if the qualified expert had testified in person. If
3 the person does not participate in the prescribed treatment plan, the person
4 is presumed to be unable to show probable cause to believe the person is
5 safe to be released.

6 (e) The person shall have a right to have an attorney represent the
7 person at the annual review hearing to determine probable cause, but the
8 person is not entitled to be present at the hearing.

9 (f) If the person does not file a petition requesting a hearing pursuant
10 to subsection (b), the court that committed the person under the Kansas
11 sexually violent predator act shall then conduct an in camera annual
12 review of the status of the person's mental condition and determine
13 whether the person's mental abnormality or personality disorder has
14 significantly changed so that an annual review hearing is warranted. The
15 court shall enter an order reflecting its determination.

16 (g) If the court at the annual review hearing determines that probable
17 cause exists to believe that the person's mental abnormality or personality
18 disorder has significantly changed so that the person is safe to be placed in
19 transitional release, then the court shall set a hearing for transitional
20 release on the issue. The person shall be entitled to be present and entitled
21 to the assistance of counsel. The attorney general shall represent the state
22 and shall have a right to have the person evaluated by experts chosen by
23 the state. The person shall also have the right to have experts evaluate the
24 person on the person's behalf and the court shall appoint an expert if the
25 person is indigent and requests an appointment. The burden of proof at the
26 hearing for transitional release shall be upon the state to prove beyond a
27 reasonable doubt that the person's mental abnormality or personality
28 disorder remains such that the person is not safe to be placed in transitional
29 release and if transitionally released is likely to engage in repeat acts of
30 sexual violence.

31 (h) If, after the hearing for transitional release, the court is convinced
32 beyond a reasonable doubt that the person is not appropriate for
33 transitional release, the court shall order that the person remain in secure
34 commitment. Otherwise, the court shall order that the person be placed in
35 transitional release.

36 (i) If the court determines that the person should be placed in
37 transitional release, the secretary shall transfer the person to the
38 transitional release program. The secretary may contract for services to be
39 provided in the transitional release program. During any period the person
40 is in transitional release, that person shall comply with any rules or
41 regulations the secretary may establish for this program and every
42 directive of the treatment staff of the transitional release program.

43 (j) At any time during which the person is in the transitional release

1 program and the treatment staff determines that the person has violated
2 any rule, regulation or directive associated with the transitional release
3 program, the treatment staff may remove the person from the transitional
4 release program and return the person to the secure commitment facility, or
5 may request the district court to issue an emergency ex parte order
6 directing any law enforcement officer to take the person into custody and
7 return the person to the secure commitment facility. Any such request may
8 be made verbally or by telephone, but shall be followed in written,
9 facsimile or electronic form delivered to the court by not later than 5:00
10 p.m. of the first day the district court is open for the transaction of business
11 after the verbal or telephonic request was made.

12 (k) Upon the person being returned to the secure commitment facility
13 from the transitional release program, notice thereof shall be given by the
14 secretary to the court. The court shall set the matter for a hearing within
15 two working days of receipt of notice of the person's having been returned
16 to the secure commitment facility and cause notice thereof to be given to
17 the attorney general, the person and the secretary. The attorney general
18 shall have the burden of proof to show probable cause that the person
19 violated conditions of transitional release. The hearing shall be to the
20 court. At the conclusion of the hearing the court shall issue an order
21 returning the person to the secure commitment facility or to the transitional
22 release program, and may order such other further conditions with which
23 the person must comply if the person is returned to the transitional release
24 program.

25 (l) For the purposes of this section, if the person is indigent and
26 without counsel, the court shall appoint counsel to assist such person.

27 Sec. 4. K.S.A. 2017 Supp. 59-29a11 is hereby amended to read as
28 follows: 59-29a11. (a) If a person has previously filed a petition for
29 transitional release, conditional release or final discharge without the
30 secretary for aging and disability services approval and the court
31 determined either upon review of the petition or following a hearing, that
32 the person's petition was frivolous or that the person's condition had not
33 significantly changed so that it is safe for the person to be at large, then the
34 court shall deny the subsequent petition, unless the petition contains facts
35 upon which a court could find the condition of the petitioner had
36 significantly changed so that a hearing was warranted. Upon receipt of a
37 first or subsequent petition from committed persons without the secretary's
38 approval, the court shall endeavor whenever possible to review the petition
39 and determine if the petition is based upon frivolous grounds and if so
40 shall deny the petition without a hearing.

41 (b) No transitional release or conditional release facility or building
42 shall be located within 2,000 feet of a licensed child care facility, an
43 established place of worship, any residence in which a child under 18

1 years of age resides, or the real property of any school upon which is
2 located a structure used by a unified school district or an accredited
3 nonpublic school for student instruction or attendance or extracurricular
4 activities of pupils enrolled in kindergarten or any grades one through 12.
5 This subsection shall not apply to any state institution or facility.

6 (c) Transitional release or conditional release facilities or buildings
7 shall be subject to all regulations applicable to other property and
8 buildings located in the zone or area that are imposed by any municipality
9 through zoning ordinance, resolution or regulation, such municipality's
10 building regulatory codes, subdivision regulations or other
11 nondiscriminatory regulations.

12 (d) On and after July 1, 2015, the secretary for aging and disability
13 services shall place no more than 16 sexually violent predators in any one
14 county on transitional release ~~or conditional release~~.

15 (e) The secretary for aging and disability services shall submit an
16 annual report to the governor and the legislature during the first week of
17 the regular legislative session detailing activities related to the transitional
18 release and conditional release of sexually violent predators. The report
19 shall include the status of such predators who have been placed in
20 transitional release or conditional release including the number of any such
21 predators and their locations; information regarding the number of
22 predators who have been returned to the sexually violent predator
23 treatment program at Larned state hospital along with the reasons for such
24 return; and any plans for the development of additional transitional release
25 or conditional release facilities.

26 Sec. 5. K.S.A. 2017 Supp. 59-29a19 is hereby amended to read as
27 follows: 59-29a19. (a) *In making the determination that a person should*
28 *be placed on conditional release, the court shall give deference to the*
29 *recommendation of the treatment staff and progress review panel.* If the
30 court determines that the person should be placed on conditional release,
31 the court, based upon the recommendation of the treatment staff *and*
32 *progress review panel*, shall establish a plan of treatment which the person
33 shall be ordered to follow. This plan of treatment may include, but shall
34 not be limited to: Provisions as to where the person shall reside and with
35 whom, taking prescribed medications, attending individual and group
36 counseling *and any other type of treatment*, maintaining employment,
37 having no contact with children, ~~not frequenting facilities, locations,~~
38 ~~events or otherwise in which children are likely to be present and not~~
39 ~~engaging in activities in which contact with children is likely having no~~
40 *direct contact with individuals that match the person's victim template,*
41 *travel restrictions, searches, home visits, substance abuse testing and*
42 *registration requirements.* Upon a showing by the person that the person
43 accepts the plan of treatment and is prepared to follow it, the court shall

1 release the person from the transitional release program.

2 ~~(b) After a minimum of five years have passed in which the person~~
3 ~~has been free of violations of conditions of such person's treatment plan,~~
4 ~~the treatment staff, or other professionals directed by the court may~~
5 ~~examine such person to determine if the person's mental abnormality or~~
6 ~~personality disorder has changed so as to warrant such person being~~
7 ~~considered for final discharge. The person preparing the report shall~~
8 ~~forward the report to the court. The court shall review the same. If the~~
9 ~~court determines that probable cause exists to believe that the person's~~
10 ~~mental abnormality or personality disorder has so changed that the person~~
11 ~~is safe to be entitled to final discharge, the court shall set a formal hearing~~
12 ~~on the issue. The attorney general shall have the burden of proof to show~~
13 ~~beyond a reasonable doubt that the person's mental abnormality or~~
14 ~~personality disorder remains such that such person is not appropriate for~~
15 ~~final discharge. The person shall have the same rights as enumerated in~~
16 ~~K.S.A. 59-29a06, and amendments thereto. Subsequent to either a court~~
17 ~~review or a hearing, the court shall issue an appropriate order with findings~~
18 ~~of fact. The order of the court shall be provided to the attorney general, the~~
19 ~~person and the secretary.~~

20 ~~(c) If, after a hearing, the court is convinced beyond a reasonable~~
21 ~~doubt that the person is not appropriate for final discharge, the court shall~~
22 ~~continue custody of the person with the secretary for placement in a secure~~
23 ~~facility, transitional release program or conditional release program.~~
24 ~~Otherwise, the court shall order the person finally discharged. In the event~~
25 ~~the court does not order final discharge of the person, the person still~~
26 ~~retains the right to annual reviews.~~

27 ~~(d) At any time during which the person is on conditional release and~~
28 ~~the professional person designated by the court in the treatment plan to~~
29 ~~monitor the person's compliance with it determines that the person has~~
30 ~~violated any material condition of that plan, that professional person may~~
31 ~~request the district court to issue an emergency ex parte order directing any~~
32 ~~law enforcement officers to take the person into custody and return the~~
33 ~~person to the secure commitment facility. Any such request may be made~~
34 ~~verbally or by telephone, but shall be followed in written, facsimile or~~
35 ~~electronic copy form delivered to the court not later than 5:00 p.m. of the~~
36 ~~first day the district court is open for the transaction of business after the~~
37 ~~verbal or telephonic request was made.~~

38 ~~(e) Upon the person being returned to the secure commitment facility~~
39 ~~from conditional release, notice thereof shall be given by the secretary to~~
40 ~~the court. The court shall set the matter for a hearing within two working~~
41 ~~days of receipt of notice of the person's having been returned to the secure~~
42 ~~commitment facility and cause notice thereof to be given to the attorney~~
43 ~~general, the person and the secretary. The attorney general shall have the~~

1 burden of proof to show probable cause that the person violated conditions
2 of conditional release. The hearing shall be to the court. At the conclusion
3 of the hearing the court shall issue an order returning the person to the
4 secure commitment facility, to the transitional release program or to
5 conditional release, and may order such other further conditions with
6 which the person must comply if the person is returned to either the
7 transitional release program or to conditional release.

8 (b) *The professional monitor shall monitor the person's compliance*
9 *with the plan of treatment ordered by the court while on conditional*
10 *release. The professional monitor shall report the person's progress on*
11 *conditional release to the court. At any time during which the person is on*
12 *conditional release and the professional monitor determines that the*
13 *person has violated any material condition of the plan, the professional*
14 *monitor may request the district court to issue an emergency ex parte*
15 *order directing any law enforcement officer to take the person into custody*
16 *and return the person to the secure commitment facility. Any such request*
17 *may be made verbally in person or by telephone, but shall be followed in*
18 *written, facsimile or electronic copy form delivered to the court not later*
19 *than 5:00 p.m. of the first day the district court is open for the transaction*
20 *of business after the verbal or telephonic request was made.*

21 (c) *A current examination of the person's mental condition shall be*
22 *made in accordance with K.S.A. 59-29a08, and amendments thereto, and*
23 *submitted to the court and the secretary once each year.*

24 (d) *Upon the person being returned to the secure commitment facility*
25 *from conditional release, notice shall be given by the secretary to the*
26 *court. The court shall set the matter for a hearing within two working days*
27 *of receipt of notice of the person's having been returned to the secure*
28 *commitment facility and cause notice to be given to the attorney general,*
29 *the person and the secretary. The attorney general shall have the burden*
30 *of proof to show probable cause that the person violated conditions of*
31 *conditional release. The hearing shall be to the court. At the conclusion of*
32 *the hearing, the court shall issue an order returning the person to the*
33 *secure commitment facility, to transitional release, or to conditional*
34 *release, and may order such other further conditions with which the*
35 *person must comply if the person is returned to either transitional release*
36 *or conditional release.*

37 (e) *After a minimum of five years have passed in which the person*
38 *has been free of violations of conditions of such person's treatment plan,*
39 *the treatment staff, or other treatment providers directed by the court, may*
40 *examine such person to determine if the person's mental abnormality or*
41 *personality disorder has changed so as to warrant such person being*
42 *considered for final discharge. The individual preparing the report shall*
43 *forward the report to the court. The court shall review the same. If the*

1 *court determines that probable cause exists to believe that the person's*
2 *mental abnormality or personality disorder has so changed that the*
3 *person is safe to be entitled to final discharge, the court shall set a formal*
4 *hearing on the issue. The attorney general shall have the burden of proof*
5 *to show beyond a reasonable doubt that the person's mental abnormality*
6 *or personality disorder remains such that such person is not appropriate*
7 *for final discharge. The person shall have the same rights as enumerated*
8 *in K.S.A. 59-29a06, and amendments thereto. Subsequent to either a court*
9 *review or a hearing, the court shall issue an appropriate order with*
10 *findings of fact. The order of the court shall be provided to the attorney*
11 *general, the person and the secretary.*

12 *(f) If, after a hearing, the court is convinced beyond a reasonable*
13 *doubt that the person is not appropriate for final discharge, the court shall*
14 *continue custody of the person with the secretary for placement in a secure*
15 *facility, or on transitional or conditional release. Otherwise, the court*
16 *shall order the person finally discharged. In the event the court does not*
17 *order final discharge of the person, the person still retains the right to*
18 *annual reviews.*

19 ~~(f)~~(g) The final discharge shall not prevent the person from being
20 prosecuted for any criminal acts which the person is alleged to have
21 committed or from being subject in the future to a subsequent commitment
22 under this act.

23 Sec. 6. K.S.A. 2017 Supp. 59-29a22 is hereby amended to read as
24 follows: 59-29a22. (a) As used in this section:

25 (1) "Person" means any individual:

26 (A) Who is receiving services for mental illness and who is admitted,
27 detained, committed, transferred or placed in the custody of the secretary
28 for aging and disability services under the authority of K.S.A. 22-3219,
29 22-3302, 22-3303, 22-3428a, 22-3429, 22-3430, 59-29a05, 75-5209 and
30 76-1306, and amendments thereto.

31 (B) In the custody of the secretary for aging and disability services
32 after being found a sexually violent predator pursuant to the Kansas
33 sexually violent predator act, including any sexually violent predator
34 placed on transitional release.

35 (2) "Restraints" means the application of any devices, other than
36 human force alone, to any part of the body of the person for the purpose of
37 preventing the person from causing injury to self or others.

38 (3) "Seclusion" means the placement of a person, alone, in a room,
39 where the person's freedom to leave is restricted and where the person is
40 not under continuous observation.

41 (4) "Emergency lockdown" means a safety measure used to isolate all
42 or a designated number of persons greater than one to their rooms for a
43 period necessary to ensure a safe and secure environment.

1 (5) "Individual person management plan" means a safety measure
2 used to isolate an individual person when the person presents a safety or
3 security risk that cannot be addressed through routine psychiatric methods.

4 (b) Each person shall have the following statutory rights:

5 (1) Upon admission or commitment, to be informed orally and in
6 writing of the person's rights under this section. Copies of this section shall
7 be posted conspicuously in each facility, and shall be available to the
8 person's guardian and immediate family.

9 (2) To refuse to perform labor which is of financial benefit to the
10 facility in which the person is receiving treatment or service. Privileges or
11 release from the facility may not be conditioned upon the performance of
12 any labor which is regulated by this subsection. Tasks of a personal
13 housekeeping nature are not considered compensable labor. A person may
14 voluntarily engage in therapeutic labor which is of financial benefit to the
15 facility if such labor is compensated in accordance with a plan approved
16 by the department and if:

17 (A) The labor is an integrated part of the person's treatment plan;

18 (B) the labor is supervised by a staff member who is qualified to
19 oversee the therapeutic aspects of the activity;

20 (C) the person has given written informed consent to engage in such
21 labor and has been informed that such consent may be withdrawn at any
22 time; and

23 (D) the labor involved is evaluated for its appropriateness by the staff
24 of the facility at least once every 180 days.

25 (3) To receive adequate treatment appropriate for such person's
26 condition.

27 (4) To be informed of such person's treatment and care and to
28 participate in the planning of such treatment and care.

29 (5) To refuse to consent to the administration of any medication
30 prescribed for medical or psychiatric treatment, except in a situation in
31 which the person is in a mental health crisis and less restrictive or intrusive
32 measures have proven to be inadequate or clinically inappropriate.
33 Treatment for a mental health crisis shall include medication or treatment
34 necessary to prevent serious physical harm to the person or to others. After
35 full explanation of the benefits and risks of such medication, the
36 medication may be administered over the person's objection, except that
37 the objection shall be recorded in the person's medical record and at the
38 same time written notice thereof shall be forwarded to the medical director
39 of the treatment facility or the director's designee. Within five days after
40 receiving such notice, excluding Saturdays, Sundays and legal holidays,
41 the medical director or designee shall deliver to the person's medical
42 provider the medical director's or designee's written decision concerning
43 the administration of that medication, and a copy of that decision shall be

1 placed in the person's medical record.

2 (A) Medication may not be used as punishment, for the convenience
3 of staff, as a substitute for a treatment program or in quantities that
4 interfere with a person's treatment program.

5 (B) A person will have the right to have explained the nature of all
6 medications prescribed, the reason for the prescription and the most
7 common side effects and, if requested, the nature of any other treatments
8 ordered.

9 (6) To be subjected to restraint, seclusion, emergency lockdown,
10 individual person management plan, or any combination thereof, only as
11 provided in this subsection.

12 (A) Restraints, seclusion, or both, may be used in the following
13 circumstances:

14 (i) If it is determined by medical staff to be necessary to prevent
15 immediate substantial bodily injury to the person or others and that other
16 alternative methods to prevent such injury are not sufficient to accomplish
17 this purpose. When used, the extent of the restraint or seclusion applied to
18 the person shall be the least restrictive measure necessary to prevent such
19 injury to the person or others, and the use of restraint or seclusion in a
20 treatment facility shall not exceed three hours without medical
21 reevaluation. When restraints or seclusion are applied, there shall be
22 monitoring of the person's condition at a frequency determined by the
23 treating physician or licensed psychologist, which shall be no less than
24 once per each 30 minutes. The superintendent of the treatment facility or a
25 physician or licensed psychologist shall sign a statement explaining the
26 treatment necessity for the use of any restraint or seclusion and shall make
27 such statement a part of the permanent treatment record of the person.

28 (ii) For security reasons during transport to or from the person's unit,
29 including, but not limited to, transport to another treatment or health care
30 facility, another secure facility or court. Any person committed or
31 transferred to a hospital or other health care facility for medical care may
32 be isolated for security reasons within a locked area.

33 (B) Emergency lockdown may be used in the following
34 circumstances:

35 (i) When necessary as an emergency measure as needed for security
36 purposes, to deal with an escape or attempted escape, the discovery of a
37 dangerous weapon or explosive device in the unit or facility or the receipt
38 of reliable information that a dangerous weapon or explosive device is in
39 the unit or facility, to prevent or control a riot or the taking of a hostage or
40 for the discovery of contraband or a unit-wide search. An emergency
41 lockdown order may be authorized only by the superintendent of the
42 facility or the superintendent's designee.

43 (ii) During a period of emergency lockdown, the status of each person

1 shall be reviewed every 30 minutes to ensure the safety of the person, and
2 each person who is locked in a room without a toilet shall be given an
3 opportunity to use a toilet at least once every hour, or more frequently if
4 medically indicated.

5 (iii) The facility shall have a written policy covering the use of
6 emergency lockdown that ensures the safety of the individual is secured
7 and that there is regular, frequent monitoring by trained staff to care for
8 bodily needs as may be required.

9 (iv) An emergency lockdown order may only be in effect for the
10 period of time needed to preserve order while dealing with the situation
11 and may not be used as a substitute for adequate staffing.

12 (C) Individual person management plan may be used in any of the
13 following situations:

14 (i) As needed when a person demonstrates or threatens substantial
15 injury to others, and routine psychiatric methods have been ineffective or
16 are unlikely to be effective in reducing such risk.

17 (ii) As needed for safety or security purposes, *for the behavioral*
18 *management in situations including, but not limited to:*

19 (a) ~~to deal~~ *Dealing with an escape or attempted escape;*

20 (b) the discovery of a dangerous weapon or explosive device in the
21 unit or facility or the receipt of reliable information that a dangerous
22 weapon or explosive device is in the unit or facility;

23 (c) ~~to prevent~~ *preventing or control* ~~controlling~~ *a riot or;*

24 (d) the taking of a hostage ~~or;~~

25 (e) *the disruption of the therapeutic environment on the unit; or*

26 (f) for the discovery of contraband.

27 (iii) The status of the person shall be reviewed every 30 minutes to
28 ensure the safety of the person.

29 (D) Restraint, seclusion, emergency lockdown, individual person
30 management plan, or any combination thereof, may be used in any other
31 situation deemed necessary by treatment staff for the safety of a person or
32 persons, facility staff or visitors. In all situations, restraint, seclusion,
33 emergency lockdown, or individual person management plan shall never
34 be used as a punishment or for the convenience of staff.

35 (E) A person may be locked or restricted in such person's room
36 during the night shift if such person resides in a unit in which each room is
37 equipped with a toilet and sink or, if a person does not have a toilet in the
38 room, if such person is given an opportunity to use a toilet at least once
39 every hour, or more frequently if medically indicated.

40 (7) To not be subject to such procedures as psychosurgery,
41 electroshock therapy, experimental medication, aversion therapy or
42 hazardous treatment procedures without the written consent of the person
43 or the written consent of a parent or legal guardian, if such person is a

1 minor or has a legal guardian provided that the guardian has obtained
2 authority to consent to such from the court which has venue over the
3 guardianship following a hearing held for that purpose.

4 (8) To individual religious worship within the facility if the person
5 desires such an opportunity, as long as it complies with applicable laws
6 and facility rules and policies. The provisions for worship shall be
7 available to all persons on a nondiscriminatory basis. No individual may
8 be coerced into engaging in any religious activities.

9 (9) To a humane psychological and physical environment within the
10 hospital facilities. All facilities shall be designed to afford patients with
11 comfort and safety, to promote dignity and ensure privacy. Facilities shall
12 also be designed to make a positive contribution to the effective attainment
13 of the treatment goals of the hospital.

14 (10) To confidentiality of all treatment records and, as permitted by
15 other applicable state or federal laws, to inspect and, upon receipt of
16 payment of reasonable costs, to receive a copy of such records. The head
17 of any treatment facility or designee who has the records may refuse to
18 disclose portions of such records if the head of the treatment facility or
19 designee states in writing that such disclosure will likely be injurious to
20 the welfare of the person.

21 (11) Except as otherwise provided, to not be filmed or taped, unless
22 the person signs an informed and voluntary consent that specifically
23 authorizes a named individual or group to film or tape the person for a
24 particular purpose or project during a specified time period. The person
25 may specify in such consent periods during which, or situations in which,
26 the person may not be filmed or taped. If a person is legally incompetent,
27 such consent shall be granted on behalf of the person by the person's
28 guardian. A person may be filmed or taped for security purposes without
29 the person's consent.

30 (12) To be informed in writing upon or at a reasonable time after
31 admission, of any liability that the patient or any of the patient's relatives
32 may have for the cost of the patient's care and treatment and of the right to
33 receive information about charges for care and treatment services.

34 (13) To be treated with respect and recognition of the patient's dignity
35 and individuality by all employees of the treatment facility.

36 (14) To send and receive sealed mail to or from legal counsel, the
37 courts, the secretary for aging and disability services, the superintendent of
38 the treatment facility, the agency designated as the developmental
39 disabilities protection and advocacy agency pursuant to P.L. 94-103, as
40 amended, private physicians and licensed psychologists. A person who is
41 indigent may have reasonable access to letter-writing materials.

42 (15) To send and receive mail with reasonable limitations. A person's
43 mail is subject to physical examination and inspection for contraband, as

1 defined by facility rules and policies.

2 (A) An officer or employee of the facility at which the person is
3 placed may delay delivery of the mail to the person for a reasonable period
4 of time to verify whether the mail contains contraband, as defined by
5 facility rules and policies, or whether the person named as the sender
6 actually sent the mail. If contraband is found, such contraband may be
7 returned to the sender or confiscated by the facility. If the officer or staff
8 member cannot determine whether the person named as the sender actually
9 sent the mail, the officer or staff member may return the mail to the sender
10 along with notice of the facility mail policy.

11 (B) The superintendent of the facility or the superintendent's designee
12 may, in accordance with the standards and the procedure under subsection
13 (c), authorize a member of the facility treatment staff to read the mail, if
14 the superintendent or the superintendent's designee has reason to believe
15 that the mail could pose a threat to security at the facility or seriously
16 interfere with the treatment, rights, or safety of the person or others.

17 (C) A person may not receive through the mail any sexually explicit
18 materials, items that are considered contraband, as defined by facility rules
19 and policies, or items deemed to jeopardize the person's individual
20 treatment, another person's treatment or the therapeutic environment of the
21 facility.

22 (16) Reasonable access to a telephone to make and receive telephone
23 calls within reasonable limits.

24 (17) To wear and use such person's own clothing and toilet articles, as
25 long as such wear and use complies with facility rules and policies, or to
26 be furnished with an adequate allowance of clothes if none are available.

27 (18) To possess personal property in a reasonable amount, as long as
28 the property complies with state laws and facility rules and policies, and be
29 provided a reasonable amount of individual storage space pursuant to
30 facility rules and policies. In no event shall a person be allowed to possess
31 or store contraband.

32 (19) Reasonable protection of privacy in such matters as toileting and
33 bathing.

34 (20) To see a reasonable number of visitors who do not pose a threat
35 to the safety and security or therapeutic climate of the person, other
36 persons, visitors or the facility.

37 (21) To present grievances under the procedures established by each
38 facility on the person's own behalf.

39 (22) To spend such person's money as such person chooses with
40 reasonable limitations, except under the following circumstances: (A)
41 When restricted by facility rules and policies; or (B) to the extent that
42 authority over the money is held by another, including the parent of a
43 minor, a court-appointed guardian of the person's estate or a representative

1 payee. A treatment facility may, as a part of its security procedures, use a
2 trust account in lieu of currency that is held by a person, and may establish
3 reasonable policies governing account transactions.

4 (c) (1) A person's rights under subsections (b)(15) to (b)(22) may be
5 denied for cause by the superintendent of the facility or the
6 superintendent's designee, or when medically or therapeutically
7 contraindicated as documented by the person's physician, licensed
8 psychologist or licensed master's level psychologist in the person's
9 treatment record. The individual shall be informed in writing of the
10 grounds for withdrawal of the right and shall have the opportunity for a
11 review of the withdrawal of the right in an informal hearing before the
12 superintendent of the facility or the superintendent's designee. There shall
13 be documentation of the grounds for withdrawal of rights in the person's
14 treatment record.

15 (2) Notwithstanding subsection (c)(1), when the facility makes an
16 administrative decision that applies equally to all persons and there is a
17 legitimate governmental reason for the decision, notice of the decision is
18 all that is required.

19 (d) The secretary for aging and disability services shall establish
20 procedures to assure protection of persons' rights guaranteed under this
21 section.

22 (e) No person may intentionally retaliate or discriminate against any
23 person or employee for contacting or providing information to any state
24 official or to an employee of any state protection and advocacy agency, or
25 for initiating, participating in, or testifying in a grievance procedure or in
26 an action for any remedy authorized under this section.

27 (f) (1) Proceedings under this section or any other appeal concerning
28 an action by the Kansas department for aging and disability services shall
29 be governed under the Kansas administrative procedure act and the Kansas
30 judicial review act. A person appealing any alleged violations of this
31 section or any other agency determination shall exhaust all administrative
32 remedies available through the Larned state hospital, including the sexual
33 predator treatment program, before having any right to request a hearing
34 under the Kansas administrative procedure act.

35 (2) A final agency determination shall include notice of the right to
36 appeal such determination ~~only to the office of administrative hearings to~~
37 *a presiding officer, as defined in K.S.A. 77-514, and amendments thereto.*
38 Within 30 days after service of a final agency determination and the notice
39 of right to appeal, the appellant may file a request for hearing in writing
40 ~~with the office of administrative hearings for a review of that~~
41 ~~determination.~~ Any request for hearing must be accompanied by a copy of
42 the final agency determination, *including all documentation submitted*
43 *through Larned state hospital and all agency responses.* Failure to timely

1 request a hearing constitutes a waiver of the right to any review. The
2 request shall be examined by the presiding officer assigned. If the
3 appellant seeks to challenge the final agency determination on any grounds
4 other than material facts in controversy or agency violation of a relevant
5 rule, regulation or statute, the appellant shall express such allegations with
6 particularity within the request for hearing. If it plainly appears from the
7 face of the request and accompanying final agency determination that the
8 appellant failed to state a claim on which relief could be granted, *or the*
9 *appellant failed to demonstrate exhaustion*, the request shall be dismissed.
10 The burden shall be on the appellant to prove by a preponderance of the
11 evidence that the agency action violated a specific rule, regulation or
12 statute. If the request for hearing does not allege a violation of a specific
13 rule, regulation or statute, the burden shall be on the appellant to prove by
14 a preponderance of the evidence that the agency had no legitimate
15 government interest in taking such action. Any dispositive ruling of the
16 ~~hearing officer assigned by the office of administrative hearings~~ *presiding*
17 *officer* shall be deemed an initial order under the Kansas administrative
18 procedure act.

19 (3) The person shall participate by telephone or other electronic
20 means ~~at any hearing before the office of administrative hearings or any~~
21 ~~proceeding under the Kansas administrative procedure act or the Kansas~~
22 ~~judicial review act, unless the presiding officer or court determines that the~~
23 ~~interests of justice require an in-person proceeding. Notwithstanding~~
24 ~~K.S.A. 77-609, and amendments thereto, if an in-person proceeding is~~
25 ~~necessary, such proceeding shall be conducted at the place where the~~
26 ~~person is committed.~~

27 (4) Except as otherwise provided in the Kansas sexually violent
28 predator act and notwithstanding K.S.A. 77-609, and amendments thereto,
29 venue shall be in Pawnee county, Kansas, for all proceedings brought
30 pursuant to the Kansas judicial review act.

31 Sec. 7. K.S.A. 2017 Supp. 59-29a02, 59-29a07, 59-29a08, 59-29a11,
32 59-29a19 and 59-29a22 are hereby repealed.

33 Sec. 8. This act shall take effect and be in force from and after its
34 publication in the statute book.