

SENATE BILL No. 102

By Committee on Judiciary

1-28

1 AN ACT concerning the Kansas sexually violent predator act; relating to
2 notice of release of a person who may be a sexually violent predator to
3 the attorney general and multidisciplinary team; time; detention during
4 proceedings; amending K.S.A. 2020 Supp. 59-29a02, 59-29a03 and 59-
5 29a05 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 2020 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 2020 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 K.S.A. 2020 Supp. 21-5506(a), and amendments thereto;

30 (3) aggravated indecent liberties with a child, as defined in K.S.A.
31 21-3504, prior to its repeal, or K.S.A. 2020 Supp. 21-5506(b), and
32 amendments thereto;

33 (4) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) and (a)(3),
34 prior to its repeal, or K.S.A. 2020 Supp. 21-5504(a)(3) and (a)(4), and
35 amendments thereto;

36 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior

1 to its repeal, or K.S.A. 2020 Supp. 21-5504(b), and amendments thereto;

2 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510,
3 prior to its repeal, or K.S.A. 2020 Supp. 21-5508(a), and amendments
4 thereto;

5 (7) aggravated indecent solicitation of a child, as defined in K.S.A.
6 21-3511, prior to its repeal, or K.S.A. 2020 Supp. 21-5508(b), and
7 amendments thereto;

8 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
9 to its repeal, or K.S.A. 2020 Supp. 21-5510, and amendments thereto;

10 (9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
11 its repeal, or K.S.A. 2020 Supp. 21-5505(b), and amendments thereto;

12 (10) aggravated incest, as defined in K.S.A. 21-3603, prior to its
13 repeal, or K.S.A. 2020 Supp. 21-5604(b), and amendments thereto;

14 (11) any conviction for a felony offense in effect at any time prior to
15 the effective date of this act, that is comparable to a sexually violent
16 offense as defined in paragraphs (1) through (11) or any federal or other
17 state conviction for a felony offense that under the laws of this state would
18 be a sexually violent offense as defined in this section;

19 (12) an attempt, conspiracy or criminal solicitation, as defined in
20 K.S.A. 21-3301, 21-3302 and 21-3303, prior to their repeal, or K.S.A.
21 2020 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a
22 sexually violent offense as defined in this subsection; or

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

27 (f) "Agency with jurisdiction" means ~~that agency which~~ *an agency*
28 *that releases upon lawful order or authority, a person confined or serving a*
29 *sentence or term of confinement* and includes the department of
30 corrections, the Kansas department for aging and disability services and
31 the prisoner review board.

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

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

37 (i) "Transitional release" means any halfway house, work release,
38 sexually violent predator treatment facility or other placement designed to
39 assist the person's adjustment and reintegration into the community.

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

41 (k) "Conditional release" means approved placement in the
42 community for a minimum of five years while under the supervision of the
43 person's court of original commitment and monitored by the secretary for

1 aging and disability services.

2 (l) "Conditional release monitor" means an individual appointed by
3 the court to monitor the person's compliance with the treatment plan while
4 placed on conditional release and who reports to the court. Such monitor
5 shall not be a court services officer.

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

9 Sec. 2. K.S.A. 2020 Supp. 59-29a03 is hereby amended to read as
10 follows: 59-29a03. (a) *(1) Prior to July 1, 2022*, when it appears that a
11 person may meet the criteria of a sexually violent predator as defined in
12 K.S.A. 59-29a02, and amendments thereto, the agency with jurisdiction
13 shall give written notice of such to the attorney general and the
14 multidisciplinary team established in subsection (f); *Such notice shall be*
15 *given 90 days prior to the anticipated release of a person and includes, but*
16 *is not limited to:*

17 ~~(A)~~ (A) The anticipated release from total confinement of a person
18 who has been convicted of a sexually violent offense, except that in the
19 case of ~~persons who are~~ a person who is returned to prison for no more
20 than 90 days as a result of revocation of postrelease supervision, written
21 notice shall be given as soon as practicable following the person's
22 readmission to prison;

23 ~~(B)~~ (B) release of a person who has been charged with a sexually
24 violent offense and who has been determined to be incompetent to stand
25 trial pursuant to K.S.A. 22-3305, and amendments thereto;

26 ~~(C)~~ (C) release of a person who has been found not guilty ~~by reason~~
27 ~~of insanity~~ of a sexually violent offense pursuant to K.S.A. 22-3428, and
28 amendments thereto; or

29 ~~(D)~~ (D) release of a person who has been found not guilty of a
30 sexually violent offense pursuant to K.S.A. 22-3428, and amendments
31 thereto, and the jury who returned the verdict of not guilty answers in the
32 affirmative to the special question asked pursuant to K.S.A. 22-3221, and
33 amendments thereto.

34 (2) *On and after July 1, 2022, and prior to July 1, 2023, when it*
35 *appears that a person may meet the criteria of a sexually violent predator*
36 *as defined in K.S.A. 59-29a02, and amendments thereto, the agency with*
37 *jurisdiction shall give written notice of such to the attorney general and*
38 *the multidisciplinary team established in subsection (f). Such notice shall*
39 *be given 90 days to two years prior to the anticipated release of a person*
40 *and includes, but is not limited to:*

41 (A) *The anticipated release from total confinement of a person who*
42 *has been convicted of a sexually violent offense, except that in the case of*
43 *a person who is returned to prison for no more than 90 days as a result of*

1 revocation of postrelease supervision, written notice shall be given as
2 soon as practicable following the person's readmission to prison;

3 (B) release of a person who has been charged with a sexually violent
4 offense and who has been determined to be incompetent to stand trial
5 pursuant to K.S.A. 22-3305, and amendments thereto;

6 (C) release of a person who has been found not guilty of a sexually
7 violent offense pursuant to K.S.A. 22-3428, and amendments thereto; or

8 (D) release of a person who has been found not guilty of a sexually
9 violent offense pursuant to K.S.A. 22-3428, and amendments thereto, and
10 the jury who returned the verdict of not guilty answers in the affirmative to
11 the special question asked pursuant to K.S.A. 22-3221, and amendments
12 thereto.

13 (3) On and after July 1, 2023, when it appears that a person may
14 meet the criteria of a sexually violent predator as defined in K.S.A. 59-
15 29a02, and amendments thereto, the agency with jurisdiction shall give
16 written notice of such to the attorney general and the multidisciplinary
17 team established in subsection (f). Such notice shall be given two years
18 prior to the anticipated release of a person and includes, but is not limited
19 to:

20 (A) The anticipated release from total confinement of a person who
21 has been convicted of a sexually violent offense, except that in the case of
22 a person who is returned to prison for no more than 90 days as a result of
23 revocation of postrelease supervision, written notice shall be given as
24 soon as practicable following the person's readmission to prison;

25 (B) release of a person who has been charged with a sexually violent
26 offense and who has been determined to be incompetent to stand trial
27 pursuant to K.S.A. 22-3305, and amendments thereto;

28 (C) release of a person who has been found not guilty of a sexually
29 violent offense pursuant to K.S.A. 22-3428, and amendments thereto; or

30 (D) release of a person who has been found not guilty of a sexually
31 violent offense pursuant to K.S.A. 22-3428, and amendments thereto, and
32 the jury who returned the verdict of not guilty answers in the affirmative to
33 the special question asked pursuant to K.S.A. 22-3221, and amendments
34 thereto.

35 (b) The agency with jurisdiction shall inform the attorney general and
36 the multidisciplinary team established in subsection (f) of the following:

37 (1) The person's name, identifying factors, anticipated future
38 residence and offense history; and

39 (2) documentation of institutional adjustment and any treatment
40 received.

41 (c) Any reports of evaluations prepared or provided pursuant to
42 subsection (b) shall demonstrate that the person evaluated was informed of
43 the following:

1 (1) The nature and purpose of the evaluation; and

2 (2) that the evaluation will not be confidential and that any statements
3 made by the person and any conclusions drawn by the evaluator may be
4 disclosed to a court, the detained person's attorney, the prosecutor and the
5 trier of fact at any proceeding conducted under the Kansas sexually violent
6 predator act.

7 (d) The permitted disclosures required to be submitted to the attorney
8 general under this section shall be deemed to be in response to the attorney
9 general's civil demand for relevant and material information to investigate
10 whether a petition shall be filed. The information provided shall be
11 specific to the purposes of the Kansas sexually violent predator act and as
12 limited in scope as reasonably practicable.

13 (e) The agency with jurisdiction, its employees, officials, members of
14 the multidisciplinary team established in subsection (f), members of the
15 prosecutor's review committee appointed as provided in subsection (g) and
16 individuals contracting, appointed or volunteering to perform services
17 hereunder shall be immune from liability for any good-faith conduct under
18 this section.

19 (f) The secretary of corrections shall establish a multidisciplinary
20 team which may include individuals from other state agencies to review
21 available records of each person referred to such team pursuant to
22 subsection (a). The team shall include the mental health professional who
23 prepared any evaluation, interviewed the person or made any
24 recommendation to the attorney general. The team shall assess whether or
25 not the person meets the definition of a sexually violent predator, as
26 established in K.S.A. 59-29a02, and amendments thereto. The team shall
27 notify the attorney general of its assessment.

28 (g) The attorney general shall appoint a prosecutor's review
29 committee to review the records of each person referred to the attorney
30 general pursuant to subsection (a). The prosecutor's review committee
31 shall assist the attorney general in the determination of whether or not the
32 person meets the definition of a sexually violent predator. The assessment
33 of the multidisciplinary team shall be made available to the attorney
34 general and the prosecutor's review committee.

35 (h) The provisions of this section are not jurisdictional and failure to
36 comply with such provisions not affecting constitutional rights in no way
37 prevents the attorney general from proceeding against a person otherwise
38 subject to the provisions of the Kansas sexually violent predator act.

39 Sec. 3. K.S.A. 2020 Supp. 59-29a05 is hereby amended to read as
40 follows: 59-29a05. (a) Upon filing of a petition under K.S.A. 59-29a04,
41 and amendments thereto, the ~~judge~~ *court* shall determine whether probable
42 cause exists to believe that the person named in the petition is a sexually
43 violent predator. If such determination is made, the ~~judge~~ *court* shall:

1 (1) Direct that *the person* be taken into custody and detained in the
2 county jail until such time as a determination is made that the person is a
3 sexually violent predator subject to commitment under the Kansas sexually
4 violent predator act, *unless the person is subject to secure confinement at a*
5 *correctional facility operated by the secretary of corrections. When the*
6 *person is no longer subject to secure confinement at a correctional facility*
7 *operated by the secretary of corrections, the court shall direct that the*
8 *sheriff of the county where the petition is filed, or the sheriff's lawful*
9 *designee, transport the person to the county jail and detain the person in*
10 *the county jail until such time as a determination is made that the person*
11 *is a sexually violent predator subject to commitment under the Kansas*
12 *sexually violent predator act; and*

13 (2) file a protective order permitting disclosures of protected health
14 information to the parties, their counsel, evaluators, experts and others
15 necessary to the litigation during the course of the proceedings subject to
16 the Kansas sexually violent predator act.

17 (b) ~~Within 72 hours after a person is taken into custody pursuant to~~
18 ~~subsection (a), or~~ As soon as reasonably practicable or agreed upon by the
19 parties, ~~such person shall~~ *after the filing of a petition under K.S.A. 59-*
20 *29a04, and amendments thereto, the court shall order that the person*
21 *named in the petition* be provided with notice of, and an opportunity to
22 appear in person at, a hearing to contest probable cause as to whether the
23 ~~detained~~ person is a sexually violent predator. At this hearing the court
24 shall:

25 (1) Verify the ~~detainer's~~ *person's* identity; and

26 (2) determine whether probable cause exists to believe that the person
27 is a sexually violent predator. The state may rely upon the petition and
28 supplement the petition with additional documentary evidence or live
29 testimony.

30 (c) At the probable cause hearing as provided in subsection (b), the
31 ~~detained~~ person shall have the following rights in addition to the rights
32 previously specified:

33 (1) To be represented by counsel;

34 (2) to present evidence on such person's behalf;

35 (3) to cross-examine witnesses who testify against such person; and

36 (4) to view and copy all petitions and reports in the court file.

37 (d) If the probable cause determination is made, the court shall order
38 that the person be transferred to an appropriate secure facility, including,
39 but not limited to, a county jail, for an evaluation as to whether the person
40 is a sexually violent predator. The evaluation ordered by the court shall be
41 conducted by a person deemed to be professionally qualified to conduct
42 such an examination.

43 (e) The person conducting the evaluation ordered by the court

1 pursuant to this section shall notify the ~~detained~~ person *being evaluated* of
2 the following:

3 (1) The nature and purpose of the evaluation; and

4 (2) that the evaluation will not be confidential and that any statements
5 made by the ~~detained~~ person and any conclusions drawn by the evaluator,
6 will be disclosed to the court, the ~~detained~~ person's attorney, the prosecutor
7 and the trier of fact at any proceeding conducted under the Kansas
8 sexually violent predator act.

9 (f) *When a proceeding under the Kansas sexually violent predator act*
10 *is required to be conducted by the court and the person involved in the*
11 *proceeding remains subject to secure confinement at a correctional facility*
12 *operated by the secretary of corrections, the court may secure the person's*
13 *attendance at the proceeding by directing the sheriff of the county where*
14 *the proceeding will be held, or the sheriff's lawful designee, to take the*
15 *person into the sheriff's physical custody. The sheriff may detain such*
16 *person in the county jail for such time deemed reasonable by the sheriff*
17 *and the secretary of corrections to secure the person's attendance at the*
18 *proceeding.*

19 (g) *Nothing in this section shall be construed to give a person:*

20 (1) *The right to appear at a proceeding under the Kansas sexually*
21 *violent predator act absent a court order; or*

22 (2) *any right whatsoever in the amount of time the person is detained in*
23 *the county jail to secure the person's attendance at a proceeding under the*
24 *Kansas sexually violent predator act.*

25 Sec. 4. K.S.A. 2020 Supp. 59-29a02, 59-29a03 and 59-29a05 are
26 hereby repealed.

27 Sec. 5. This act shall take effect and be in force from and after its
28 publication in the statute book.