

2012 Kansas Statutes

22-3428a. Same; annual hearing on continued commitment; procedure, notice and standards; victim notification. (1) Any person found not guilty, pursuant to K.S.A. 22-3220 and 22-3221, and amendments thereto, who remains in the state security hospital or a state hospital for over one year pursuant to a commitment under K.S.A. 22-3428, and amendments thereto, shall be entitled annually to request a hearing to determine whether or not the person continues to be a mentally ill person. The request shall be made in writing to the district court of the county where the person is hospitalized and shall be signed by the committed person or the person's counsel. When the request is filed, the court shall give notice of the request to: (a) The county or district attorney of the county in which the person was originally ordered committed, and (b) the chief medical officer of the state security hospital or state hospital where the person is committed. The chief medical officer receiving the notice, or the officer's designee, shall conduct a mental examination of the person and shall send to the district court of the county where the person is hospitalized and to the county or district attorney of the county in which the person was originally ordered committed a report of the examination within 21 days from the date when notice from the court was received. Within 14 days after receiving the report of the examination, the county or district attorney receiving it may file a motion with the district court that gave the notice, requesting the court to change the venue of the hearing to the district court of the county in which the person was originally committed, or the court that gave the notice on its own motion may change the venue of the hearing to the district court of the county in which the person was originally committed. Upon receipt of that motion and the report of the mental examination or upon the court's own motion, the court shall transfer the hearing to the district court specified in the motion and send a copy of the court's records of the proceedings to that court.

(2) After the time in which a change of venue may be requested has elapsed, the court having venue shall set a date for the hearing, giving notice thereof to the county or district attorney of the county, the committed person, the person's counsel and the secretary of corrections for the purpose of providing victim notification. If there is no counsel of record, the court shall appoint a counsel for the committed person. The committed person shall have the right to procure, at the person's own expense, a mental examination by a physician or licensed psychologist of the person's own choosing. If a committed person is financially unable to procure such an examination, the aid to indigent defendants provisions of article 45 of chapter 22 of the Kansas Statutes Annotated shall be applicable to that person. A committed person requesting a mental examination pursuant to K.S.A. 22-4508, and amendments thereto, may request a physician or licensed psychologist of the person's own choosing and the court shall request the physician or licensed psychologist to provide an estimate of the cost of the examination. If the physician or licensed psychologist agrees to accept compensation in an amount in accordance with the compensation standards set by the board of supervisors of panels to aid indigent defendants, the judge shall appoint the requested physician or licensed psychologist; otherwise, the court shall designate a physician or licensed psychologist to conduct the examination. Copies of each mental examination of the committed person shall be filed with the court at least seven days prior to the hearing and shall be supplied to the county or district attorney receiving notice pursuant to this section and the committed person's counsel.

(3) At the hearing the committed person shall have the right to present evidence and cross-examine the witnesses. The court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or state hospital where the person is under commitment, and shall determine whether the committed person continues to be a mentally ill person. At the hearing the court may make any order that a court is empowered to make pursuant to subsections (3), (4) and (5) of K.S.A. 22-3428, and amendments thereto. If the court finds by clear and convincing evidence the committed person is not a mentally ill person, the court shall order the person discharged; otherwise, the person shall remain committed or be conditionally released. The court shall notify the secretary of corrections of the outcome of the hearing for the purpose of providing victim notification.

(4) Costs of a hearing held pursuant to this section shall be assessed against and paid by the county in which the person was originally ordered committed.

History: L. 1978, ch. 127, § 1; L. 1979, ch. 97, § 2; L. 1980, ch. 105, § 2; L. 1982, ch. 148, § 3; L. 1986, ch. 211, § 29; L. 1986, ch. 299, § 3; L. 1986, ch. 134, § 1; L. 1989, ch. 101, § 2; L. 1993, ch. 247, § 3; L. 1995, ch. 251, § 29; L. 2010, ch. 61, § 5; L. 2011, ch. 91, § 18; July 1.

Revisor's Note:

Section was amended twice in the 2010 session, see also 22-3428d.