

HOUSE BILL No. 2508

AN ACT concerning crimes, punishment and criminal procedure; relating to definitions in the Kansas criminal code; modifying the definition of possession; relating to abuse of a child; modifying the elements of the offense; increasing criminal penalties thereof; relating to conditions of release prior to trial; requiring a forfeiture of an appearance bond to be set aside in certain circumstances; relating to preliminary hearings; permitting witness testimony through two-way electronic audio-video communication devices; relating to competency to stand trial; mobile competency evaluations; amending K.S.A. 22-3301 and K.S.A. 2021 Supp. 21-5111, 21-5602, 21-5701, 22-2807, 22-2902, 22-3302, 22-3303, 22-3305, 22-3428 and 22-3429 and repealing the existing sections.

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

Section 1. K.S.A. 2021 Supp. 21-5111 is hereby amended to read as follows: 21-5111. The following definitions shall apply when the words and phrases defined are used in this code, except when a particular context clearly requires a different meaning.

- (a) "Act" includes a failure or omission to take action.
- (b) "Another" means a person or persons as defined in this code other than the person whose act is claimed to be criminal.
- (c) "Conduct" means an act or a series of acts; and the accompanying mental state.
- (d) "Conviction" includes a judgment of guilt entered upon a plea of guilty.
- (e) "Deception" means knowingly creating or reinforcing a false impression, including false impressions as to law, value, intention or other state of mind. "Deception" as to a person's intention to perform a promise shall not be inferred from the fact alone that such person did not subsequently perform the promise. Falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive reasonable persons, is not "deception".
- (f) "Deprive permanently" means to:
 - (1) Take from the owner the possession, use or benefit of property, without an intent to restore the same;
 - (2) retain property without intent to restore the same or with intent to restore it to the owner only if the owner purchases or leases it back, or pays a reward or other compensation for its return; or
 - (3) sell, give, pledge or otherwise dispose of any interest in property or subject it to the claim of a person other than the owner.
- (g) "Distribute" means the actual or constructive transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale, furnishing, buying for, delivering, giving, or any act that causes or is intended to cause some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act, or otherwise authorized by law.
- (h) "DNA" means deoxyribonucleic acid.
- (i) "Domestic violence" means an act or threatened act of violence against a person with whom the offender is involved or has been involved in a dating relationship, or an act or threatened act of violence against a family or household member by a family or household member. "Domestic violence" also includes any other crime committed against a person or against property, or any municipal ordinance violation against a person or against property, when directed against a person with whom the offender is involved or has been involved in a dating relationship or when directed against a family or household member by a family or household member. For the purposes of this definition:
 - (1) "Dating relationship" means a social relationship of a romantic nature. In addition to any other factors the court deems relevant, the trier of fact may consider the following when making a determination of whether a relationship exists or existed: Nature of the relationship, length of time the relationship existed, frequency of interaction between the parties and time since termination of the relationship, if applicable.

(2) "Family or household member" means persons 18 years of age or older who are spouses, former spouses, parents or stepparents and children or stepchildren, and persons who are presently residing together or have resided together in the past, and persons who have a child in common regardless of whether they have been married or have lived together at any time. "Family or household member" also includes a man and woman if the woman is pregnant and the man is alleged to be the father, regardless of whether they have been married or have lived together at any time.

(j) "Domestic violence offense" means any crime committed whereby the underlying factual basis includes an act of domestic violence.

(k) "Dwelling" means a building or portion thereof, a tent, a vehicle or other enclosed space ~~which~~ *that* is used or intended for use as a human habitation, home or residence.

(l) "Expungement" means the sealing of records such that the records are unavailable except to the petitioner and criminal justice agencies as provided by K.S.A. 22-4701 et seq., and amendments thereto, and except as provided in this act.

(m) "Firearm" means any weapon designed or having the capacity to propel a projectile by force of an explosion or combustion.

(n) "Forcible felony" includes any treason, murder, voluntary manslaughter, rape, robbery, burglary, arson, kidnapping, aggravated battery, aggravated sodomy and any other felony ~~which~~ *that* involves the use or threat of physical force or violence against any person.

(o) "Intent to defraud" means an intention to deceive another person, and to induce such other person, in reliance upon such deception, to assume, create, transfer, alter or terminate a right, obligation or power with reference to property.

(p) "Law enforcement officer" means:

(1) Any person who by virtue of such person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(2) any officer of the Kansas department of corrections or, for the purposes of K.S.A. 2021 Supp. 21-5412 and ~~subsection (d) of K.S.A. 2021 Supp. 21-5413(d)~~, and amendments thereto, any employee of the Kansas department of corrections; or

(3) any university police officer or campus police officer, as defined in K.S.A. 22-2401a, and amendments thereto.

(q) "Obtain" means to bring about a transfer of interest in or possession of property, whether to the offender or to another.

(r) "Obtains or exerts control" over property includes, but is not limited to, the taking, carrying away, sale, conveyance, transfer of title to, interest in, or possession of property.

(s) "Owner" means a person who has any interest in property.

(t) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(u) "Personal property" means goods, chattels, effects, evidences of rights in action and all written instruments by which any pecuniary obligation, or any right or title to property real or personal, shall be created, acknowledged, assigned, transferred, increased, defeated, discharged, or dismissed.

(v) "Possession" means *knowingly* having joint or exclusive control over an item ~~with knowledge of or intent to have such control~~ or knowingly keeping some item in a place where the person has some measure of access and right of control.

(w) "Property" means anything of value, tangible or intangible, real or personal.

(x) "Prosecution" means all legal proceedings by which a person's liability for a crime is determined.

(y) "Prosecutor" means the same as prosecuting attorney in K.S.A. 22-2202, and amendments thereto.

(z) "Public employee" is a person employed by or acting for the

state or by or for a county, municipality or other subdivision or governmental instrumentality of the state for the purpose of exercising their respective powers and performing their respective duties, and who is not a "public officer."

(aa) "Public officer" includes the following, whether elected or appointed:

(1) An executive or administrative officer of the state, or a county, municipality or other subdivision or governmental instrumentality of or within the state;

(2) a member of the legislature or of a governing board of a county, municipality, or other subdivision of or within the state;

(3) a judicial officer, which shall include a judge of the district court, juror, master or any other person appointed by a judge or court to hear or determine a cause or controversy;

(4) a hearing officer, which shall include any person authorized by law or private agreement, to hear or determine a cause or controversy and who is not a judicial officer;

(5) a law enforcement officer; and

(6) any other person exercising the functions of a public officer under color of right.

(bb) "Real property" or "real estate" means every estate, interest, and right in lands, tenements and hereditaments.

(cc) "Solicit" or "solicitation" means to command, authorize, urge, incite, request or advise another to commit a crime.

(dd) "State" or "this state" means the state of Kansas and all land and water in respect to which the state of Kansas has either exclusive or concurrent jurisdiction, and the air space above such land and water. "Other state" means any state or territory of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

(ee) "Stolen property" means property over which control has been obtained by theft.

(ff) "Threat" means a communicated intent to inflict physical or other harm on any person or on property.

(gg) "Written instrument" means any paper, document or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying or recording information, and any money, token, stamp, seal, badge, trademark, or other evidence or symbol of value, right, privilege or identification, which *that* is capable of being used to the advantage or disadvantage of some person.

Sec. 2. K.S.A. 2021 Supp. 21-5602 is hereby amended to read as follows: 21-5602. (a) Abuse of a child is ~~knowingly committing any of the following acts against a child under 18 years of age:~~

~~(1) Torturing or cruelly beating any child under the age of 18 years;~~

~~(2) shaking any child under the age of 18 years which results in great bodily harm to the child; or~~

~~(3) inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years.~~

~~(b)(A) Knowingly torturing, cruelly beating, cruelly striking or cruelly kicking;~~

~~(B) knowingly inflicting cruel and inhuman corporal punishment;~~
~~or~~

~~(C) knowingly using cruel and inhuman physical restraint, including caging or confining the child in a space not designated for human habitation or binding the child in a way that is not medically necessary;~~

~~(2) recklessly causing great bodily harm, abusive head trauma, permanent disability or disfigurement; or~~

~~(3) (A) knowingly causing great bodily harm, abusive head trauma, permanent disability or disfigurement;~~

~~(B) knowingly inflicting cruel and inhuman corporal punishment with a deadly weapon; or~~

~~(C) knowingly impeding the normal breathing or circulation of the~~

blood by applying pressure on the throat, neck or chest of the child or by blocking the nose or mouth of the child in a manner whereby death or great bodily harm could be inflicted.

(b) Abuse of a child is as defined in:

~~(1) Severity level 5, person felony, except as provided in subsection (b)(2); and~~

~~(2) severity level 4, person felony, if the victim is under the age of six years;~~

~~(c) A person who violates the provisions of this section may also be prosecuted for, convicted of, and punished for any form of battery or homicide~~ Subsection (a)(1) is a:

(A) Severity level 5, person felony if the child is at least six years of age but less than 18 years of age; and

(B) severity level 3, person felony if the child is under six years of age;

(2) subsection (a)(2) is a severity level 4, person felony; and

(3) subsection (a)(3) is a severity level 3, person felony.

Sec. 3. K.S.A. 2021 Supp. 21-5701 is hereby amended to read as follows: 21-5701. As used in K.S.A. 2021 Supp. 21-5701 through 21-5717, and amendments thereto:

(a) "Controlled substance" means any drug, substance or immediate precursor included in any of the schedules designated in K.S.A. 65-4105, 65-4107, 65-4109, 65-4111 and 65-4113, and amendments thereto.

(b) (1) "Controlled substance analog" means a substance that is intended for human consumption, and at least one of the following:

(A) The chemical structure of the substance is substantially similar to the chemical structure of a controlled substance listed in or added to the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto;

(B) the substance has a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto; or

(C) with respect to a particular individual, such individual represents or intends the substance to have a stimulant, depressant or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant or hallucinogenic effect on the central nervous system of a controlled substance included in the schedules designated in K.S.A. 65-4105 or 65-4107, and amendments thereto.

(2) "Controlled substance analog" does not include:

(A) A controlled substance;

(B) a substance for which there is an approved new drug application; or

(C) a substance with respect to which an exemption is in effect for investigational use by a particular person under section 505 of the federal food, drug, and cosmetic act, 21 U.S.C. § 355, to the extent conduct with respect to the substance is permitted by the exemption.

(c) "Cultivate" means the planting or promotion of growth of five or more plants that contain or can produce controlled substances.

(d) "Distribute" means the actual, constructive or attempted transfer from one person to another of some item whether or not there is an agency relationship. "Distribute" includes, but is not limited to, sale, offer for sale or any act that causes some item to be transferred from one person to another. "Distribute" does not include acts of administering, dispensing or prescribing a controlled substance as authorized by the pharmacy act of the state of Kansas, the uniform controlled substances act or otherwise authorized by law.

(e) "Drug" means:

(1) Substances recognized as drugs in the official United States pharmacopeia, official homeopathic pharmacopoeia of the United States or official national formulary or any supplement to any of them;

(2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or animals;

(3) substances, other than food, intended to affect the structure or any function of the body of humans or animals; and

(4) substances intended for use as a component of any article specified in paragraph (1), (2) or (3). It does not include devices or their components, parts or accessories.

(f) "Drug paraphernalia" means all equipment and materials of any kind that are used, or primarily intended or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance and in violation of this act. "Drug paraphernalia" shall include, but is not limited to:

(1) Kits used or intended for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or from which a controlled substance can be derived;

(2) kits used or intended for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) isomerization devices used or intended for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used or intended for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;

(5) scales and balances used or intended for use in weighing or measuring controlled substances;

(6) diluents and adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose and lactose that are used or intended for use in cutting controlled substances;

(7) separation gins and sifters used or intended for use in removing twigs and seeds from or otherwise cleaning or refining marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used or intended for use in compounding controlled substances;

(9) capsules, balloons, envelopes, bags and other containers used or intended for use in packaging small quantities of controlled substances;

(10) containers and other objects used or intended for use in storing or concealing controlled substances;

(11) hypodermic syringes, needles and other objects used or intended for use in parenterally injecting controlled substances into the human body; *and*

(12) objects used or primarily intended or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish, hashish oil, phencyclidine (PCP), methamphetamine or amphetamine into the human body, such as:

(A) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads or punctured metal bowls;

(B) water pipes, bongs or smoking pipes designed to draw smoke through water or another cooling device;

(C) carburetion pipes, glass or other ~~heat-resistant~~ *heat-resistant* tubes or any other device used, intended to be used or designed to be used to cause vaporization of a controlled substance for inhalation;

(D) smoking and carburetion masks;

(E) roach clips, objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(F) miniature cocaine spoons and cocaine vials;

(G) chamber smoking pipes;

(H) carburetor smoking pipes;

(I) electric smoking pipes;

(J) air-driven smoking pipes;

- (K) chillums;
- (L) bongs;
- (M) ice pipes or chillers;
- (N) any smoking pipe manufactured to disguise its intended purpose;
- (O) wired cigarette papers; or
- (P) cocaine freebase kits.

"Drug paraphernalia" shall not include any products, chemicals or materials described in K.S.A. 2021 Supp. 21-5709(a), and amendments thereto.

(g) "Immediate precursor" means a substance that the state board of pharmacy has found to be and by rules and regulations designates as being the principal compound commonly used or produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(h) "Isomer" means all enantiomers and diastereomers.

(i) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance either directly or indirectly or by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. "Manufacture" does not include:

(1) The preparation or compounding of a controlled substance by an individual for the individual's own lawful use or the preparation, compounding, packaging or labeling of a controlled substance:

(A) By a practitioner or the practitioner's agent pursuant to a lawful order of a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(B) by a practitioner or by the practitioner's authorized agent under such practitioner's supervision for the purpose of or as an incident to research, teaching or chemical analysis or by a pharmacist or medical care facility as an incident to dispensing of a controlled substance; or

(2) the addition of diluents or adulterants, including, but not limited to, quinine hydrochloride, mannitol, mannite, dextrose or lactose that are intended for use in cutting a controlled substance.

(j) "Marijuana" means all parts of all varieties of the plant Cannabis whether growing or not, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or resin. "Marijuana" does not include:

(1) The mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, except the resin extracted therefrom, fiber, oil or cake or the sterilized seed of the plant that is incapable of germination;

(2) any substance listed in schedules II through V of the uniform controlled substances act;

(3) cannabidiol (other trade name: 2-[(3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl)-5-pentyl-1,3-benzenediol]; or

(4) industrial hemp as defined in K.S.A. 2021 Supp. 2-3901, and amendments thereto, when cultivated, produced, possessed or used for activities authorized by the commercial industrial hemp act.

(k) "Minor" means a person under 18 years of age.

(l) "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation thereof that is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids

of opium;

(3) opium poppy and poppy straw; *and*

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves and any salt, compound, isomer, derivative or preparation thereof that is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves that do not contain cocaine or ecgonine.

(m) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under K.S.A. 65-4102, and amendments thereto, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms.

(n) "Opium poppy" means the plant of the species *Papaver somniferum* L. except its seeds.

(o) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association or any other legal entity.

(p) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

~~(q) "Possession" means having joint or exclusive control over an item with knowledge of and intent to have such control or knowingly keeping some item in a place where the person has some measure of access and right of control.~~

(†) "School property" means property upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any of the grades one through 12. This definition shall not be construed as requiring that school be in session or that classes are actually being held at the time of the offense or that children must be present within the structure or on the property during the time of any alleged criminal act. If the structure or property meets the above definition, the actual use of that structure or property at the time alleged shall not be a defense to the crime charged or the sentence imposed.

~~(s)~~(r) "Simulated controlled substance" means any product that identifies itself by a common name or slang term associated with a controlled substance and that indicates on its label or accompanying promotional material that the product simulates the effect of a controlled substance.

Sec. 4. K.S.A. 2021 Supp. 22-2807 is hereby amended to read as follows: 22-2807. (†)(a) If a defendant fails to appear as directed by the court and guaranteed by an appearance bond, the court in which the bond is deposited shall declare a forfeiture of the bail *and issue a warrant for the defendant's arrest. If the defendant is charged with a felony offense, the sheriff shall enter such warrant into the national crime information center's index within 14 days of issuance of the warrant. If such warrant is not entered into such index, the sheriff shall notify the court thereof.*

(2)(b) An appearance bond may only be forfeited by the court upon a failure to appear. If a defendant violates any other condition of bond, the bond may be revoked and the defendant remanded to custody. An appearance bond is revoked by the execution of a warrant for a defendant's arrest for a violation of a bond condition. The magistrate shall ~~forthwith~~ promptly set a new bond pursuant to requirements of K.S.A. 22-2802, and amendments thereto.

~~(3)(c) (1) The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture. If the surety can prove that the defendant is incarcerated somewhere within the United States prior to judgment of default by providing to the court a written statement, signed by the surety under penalty of perjury, setting forth~~

~~details of such incarceration, then the court shall set aside the forfeiture. Upon the defendant's return, the surety may be ordered to pay the costs of that return.~~

(2) The court shall direct that a forfeiture be set aside, upon such conditions as the court may impose, if:

(A) The surety can prove that the defendant is incarcerated somewhere within the United States prior to judgment of default by providing to the court a written statement, signed by the surety under penalty of perjury, setting forth details of such incarceration;

(B) the warrant required to be issued by subsection (a) was not issued within 14 days of the forfeiture;

(C) a warrant that is required to be entered into the national crime information center's index pursuant to subsection (a) was not entered within 14 days of issuance, unless there is good cause shown for the failure to enter such warrant into the index; or

(D) the defendant has been arrested outside of this state and the prosecuting attorney has declined to proceed with extradition.

(3) Upon the defendant's return, the surety may be ordered to pay the costs of such return.

~~(4)~~*(d)* When a forfeiture has not been set aside, the court shall on motion enter a judgment of default and execution may issue thereon. If the forfeiture has been decreed by a district magistrate judge and the amount of the bond exceeds the limits of the civil jurisdiction prescribed by law for a district magistrate judge, the judge shall notify the chief judge in writing of the forfeiture and the matter shall be assigned to a district judge who, on motion, shall enter a judgment of default. By entering into a bond the obligors submit to the jurisdiction of any court having power to enter judgment upon default and irrevocably appoint the clerk of that court as their agent upon whom any papers affecting their liability may be served. Their liability may be enforced on motion without the necessity of an independent action. The motion and notice thereof may be served on the clerk of the court, who shall forthwith mail copies to the obligors to their last known addresses. No judgment may be entered against the obligor in an appearance bond until more than 60 days after notice is served as provided herein. No judgment may be entered against the obligor in an appearance bond more than two years after a defendant's failure to appear.

~~(5)~~*(e)* After entry of ~~such~~ judgment pursuant to subsection (d), the court may remit ~~it~~ *such judgment* in whole or in part under the conditions applying to the setting aside of forfeiture in subsection ~~(3)~~ *(c)*.

Sec. 5. K.S.A. 2021 Supp. 22-2902 is hereby amended to read as follows: 22-2902. ~~(1)~~*(a)* The state and every person charged with a felony shall have a right to a preliminary examination before a magistrate, unless such charge has been issued as a result of an indictment by a grand jury.

~~(2)~~*(b)* The preliminary examination shall be held before a magistrate of a county in which venue for the prosecution lies within 14 days after the arrest or personal appearance of the defendant. Continuances may be granted only for good cause shown.

~~(3)~~*(c)* The defendant shall not enter a plea at the preliminary examination. The defendant shall be personally present and except for witnesses who are children less than 13 years of age, the witnesses shall be examined in the defendant's presence. The defendant's voluntary absence after the preliminary examination has been begun in the defendant's presence shall not prevent the continuation of the examination. Except for witnesses who are children less than 13 years of age, the defendant shall have the right to cross-examine witnesses against the defendant and introduce evidence in the defendant's own behalf. If from the evidence it appears that a felony has been committed and there is probable cause to believe that a felony has been committed by the defendant, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case; otherwise, the magistrate shall discharge the defendant. When the victim of the felony

is a child less than 13 years of age, the finding of probable cause as provided in this subsection may be based upon hearsay evidence in whole or in part presented at the preliminary examination by means of statements made by a child less than 13 years of age on a videotape recording or by other means.

(d) The defendant and the state shall be permitted to present the testimony of a witness through a two-way electronic audio-video communication device.

~~(4)~~*(e) If the defendant and the state waive preliminary examination, the magistrate shall order the defendant bound over to the district judge having jurisdiction to try the case.*

~~(5)~~*(f) Any judge of the district court may conduct a preliminary examination, and a district judge may preside at the trial of any defendant even though such judge presided at the preliminary examination of such defendant.*

~~(6)~~*(g) The complaint or information, as filed by the prosecuting attorney pursuant to K.S.A. 22-2905, and amendments thereto, shall serve as the formal charging document at trial. When a defendant and prosecuting attorney reach agreement on a plea of guilty or nolo contendere, the defendant and the prosecuting attorney shall notify the district court of such agreement and arrange for a time to plead, pursuant to K.S.A. 22-3210, and amendments thereto.*

~~(7)~~*(h) The judge of the district court, when conducting the preliminary examination, shall have the discretion to conduct arraignment, subject to assignment pursuant to K.S.A. 20-329, and amendments thereto, at the conclusion of the preliminary examination.*

Sec. 6. K.S.A. 22-3301 is hereby amended to read as follows: 22-3301. ~~(1)~~ For the purpose of this article,:

(a) A person is "incompetent to stand trial" when—~~he~~ such person is charged with a crime and, because of mental illness or defect is unable:

~~(a)~~*(1) To understand the nature and purpose of the proceedings against—~~him~~ such person; or*

~~(b)~~*(2) to make or assist in making—~~his~~ such person's defense.*

~~(2)~~*(b) Whenever the words "competent," "competency," "incompetent" and "incompetency" are used without qualification in this article, they shall refer to the defendant's competency or incompetency to stand trial, as defined in subsection—~~(1)~~ of this section (a).*

(c) "Appropriate state, county or private institution or facility" means a facility with sufficient resources, staffing and space to conduct the evaluation or restoration treatment of the defendant. "Appropriate state, county or private institution or facility" does not include a jail or correctional facility as a location where evaluation and restoration treatment services are provided unless the administrative head or law enforcement official in charge of the jail or correctional facility agrees that the facility has the appropriate physical and care capabilities that such services may be provided by:

(1) The state security hospital or its agent or a state hospital or its agent;

(2) a qualified mental health professional as defined in K.S.A. 59-2946, and amendments thereto, who is qualified by training and expertise to conduct competency restoration treatment;

(3) an individual who is qualified by training and experience to conduct competency evaluations and restoration treatment and is licensed by the behavioral sciences regulatory board; or

(4) a physician who is qualified by training and experience to conduct competency evaluations and restoration treatment and is licensed by the state board of healing arts.

Sec. 7. K.S.A. 2021 Supp. 22-3302 is hereby amended to read as follows: 22-3302. ~~(1)~~*(a) At any time after the defendant has been charged with a crime and before pronouncement of sentence, the defendant, the defendant's counsel or the prosecuting attorney may request a determination of the defendant's competency to stand trial. If,*

upon the request of either party or upon the judge's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the defendant is incompetent to stand trial, the proceedings shall be suspended and a hearing conducted to determine the competency of the defendant.

~~(2)(b)~~ If the defendant is charged with a felony, the hearing to determine the competency of the defendant shall be conducted by a district judge.

~~(3)(A)(c)~~ (1) The court shall determine the issue of competency and may impanel a jury of six persons to assist in making the determination. The court may order a psychiatric or psychological examination of the defendant. To facilitate the examination, the court may:

~~(a)(A)~~ Commit the defendant to the state security hospital or any Order that an evaluation be completed by an appropriate state, county, or private institution or facility for examination and report to the court, except that the court shall not commit the defendant to the state security hospital or any other state institution unless, prior to such commitment, the director of a local county or private institution recommends to the court and to the secretary for aging and disability services that examination of the defendant should be performed at a state institution to be conducted in person or by use of available electronic means while the defendant is in jail, at any secure location or on pretrial release;

~~(b)(B)~~ designate any an appropriate psychiatric or psychological clinic, mental health center or other psychiatric or psychological state, county or private institution or facility to conduct the examination while the defendant is in jail, at any secure location or on pretrial release; or

~~(c)(C)~~ appoint two a-qualified licensed physicians physician who is qualified through training or experience or a licensed psychologists, or one of each, psychologist to examine the defendant and report to the court.

~~(B)(2)~~ If the court ~~commits~~ orders the defendant committed to an institution or facility for the examination, the commitment shall be for a period not to exceed 60 days from the date of admission or until the examination is completed, whichever is the shorter period of time. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

~~(C)(3)~~ Before the expiration of the 60-day evaluation period, the professional approved by the court to examine the defendant or, if the defendant is committed for inpatient examination, the chief medical officer or head of the appropriate institution or facility shall certify to the court whether the defendant is competent to stand trial.

(4) Upon notification of the court that a defendant committed for psychiatric or psychological examination under this subsection has been found competent to stand trial, the court shall order that the defendant be returned no later than seven days after receipt of the notice for proceedings under this section. If the defendant is not returned within that time, the county in which where the proceedings will be held shall pay the costs of maintaining the defendant at the institution or facility for the period of time the defendant remains at the institution or facility in excess of the seven-day period.

~~(4)(d)~~ If the defendant is found to be competent, the proceedings which that have been suspended shall be resumed. If the proceedings were suspended before or during the preliminary examination, the judge who conducted the competency hearing may conduct a preliminary examination or, if a district magistrate judge was conducting the proceedings prior to the competency hearing, the judge who conducted the competency hearing may order the preliminary examination to be heard by a district magistrate judge.

~~(5)(e)~~ If the defendant is found to be incompetent to stand trial, the court shall proceed in accordance with K.S.A. 22-3303, and

amendments thereto.

~~(6)~~(f) If proceedings are suspended and a hearing to determine the defendant's competency is ordered after the defendant is in jeopardy, the court may either order a recess or declare a mistrial.

~~(7)~~(g) The defendant shall be present personally at all proceedings under this section.

Sec. 8. K.S.A. 2021 Supp. 22-3303 is hereby amended to read as follows: 22-3303. (a) (1) A defendant who is charged with a crime and is found to be incompetent to stand trial shall be ~~committed~~ *ordered* for evaluation and treatment ~~to any, conducted on an outpatient or inpatient basis, by an appropriate state, county, or private institution or facility. At the time of such commitment the institution of commitment shall notify the county or district attorney of the county in which the criminal proceedings are pending for the purpose of providing victim notification. Any such commitment shall be for a period not to exceed 90 days. Within 90 days after the defendant's commitment to such institution, the chief medical officer of such institution shall~~ *Evaluation or restorative treatment of a defendant shall not be conducted in a jail unless the administrative head or law enforcement official in charge of the jail agrees to such evaluation or restorative treatment being conducted in such jail.*

(2) An evaluation and treatment may be ordered to be conducted on an outpatient basis in person or by use of available electronic means while the defendant is in jail, at any secure location, on pretrial release or in any other appropriate setting.

(3) For a defendant charged with a misdemeanor offense, outpatient evaluation and treatment may be ordered to be conducted by an appropriate state, county or private institution or facility.

(4) For a defendant charged with a felony offense, outpatient evaluation and treatment may be ordered to be conducted by an appropriate state, county or private institution or facility.

(5) For a defendant charged with a felony offense, a commitment to the state security hospital or its agent or a state hospital or its agent may be conducted on an inpatient basis or, if the defendant meets the screening criteria established by the state security hospital, on an outpatient basis.

(6) At the commencement of outpatient treatment, the institution or facility conducting the treatment shall notify the prosecuting attorney in the county where the criminal proceeding is pending for the purpose of providing victim notification.

(b) (1) Except as provided in subsection (d), if the defendant is ordered to receive an evaluation and treatment on an outpatient basis conducted by an appropriate state, county or private institution or facility, the chief medical officer of such institution or head of such facility shall certify to the court, within 90 days after the commencement of outpatient treatment, whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. The court shall set a hearing within 21 days after certification unless exceptional circumstances warrant delay, for the purpose of determining competency.

*(2) If such probability does exist, the court shall order the defendant to remain in jail or at a secure location, on pretrial release pursuant to K.S.A. 22-2802, and amendments thereto, or at an appropriate state, county, private institution or facility setting until the defendant attains competency to stand trial or for a period of six months from the date of the original commitment the commencement of outpatient treatment, whichever occurs first. If such probability does not exist, the court shall order the ~~secretary for aging and disability services~~ *prosecuting attorney where the charges are filed* to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, ~~within 21 days of receipt of the certification from the chief medical officer of the institution or head of the facility unless exceptional circumstances warrant delay.~~ When a defendant is charged with any off-grid felony,*

any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A. 2021 Supp. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e), and amendments thereto, who is likely to cause harm to self-~~and~~ or others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

~~(2)~~(3) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in ~~subsection (1) paragraph (2)~~, has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the *prosecuting attorney where the charges are filed or the secretary for aging and disability services* to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, *within 21 days of receipt of the certification from the chief medical officer of the institution or the head of the facility unless exceptional circumstances warrant delay*. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, K.S.A. 2021 Supp. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e), and amendments thereto, who is likely to cause harm to self-~~and~~ or others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

~~(3)~~(4) When reasonable grounds exist to believe that a defendant who has been adjudged incompetent to stand trial is competent, the court in which the criminal case is pending shall conduct a hearing in accordance with K.S.A. 22-3302, and amendments thereto, to determine the person's present mental condition. Such court shall give reasonable notice of such hearings to the prosecuting attorney, the defendant and the defendant's attorney of record, if any. The prosecuting attorney shall provide victim notification. If the court, following such hearing, finds the defendant to be competent, the proceedings pending against the defendant shall be resumed.

~~(4)~~(5) A defendant committed to a public institution *or facility* under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment ~~may~~ *shall* be credited with all ~~or any part~~ of the time during which the defendant was committed and confined in such public institution *or facility*.

(c) (1) Except as provided in subsection (d), if a defendant is ordered or met criteria to receive an evaluation and treatment on an outpatient basis conducted by the state security hospital or its agent or a state hospital or its agent, the chief medical officer shall certify to the court, within 90 days after commencement of treatment, whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future.

(2) If such probability does exist, the court shall order the defendant to remain in jail or at a secure location, on pretrial release pursuant to K.S.A. 22-2802, and amendments thereto, or at an appropriate setting until the defendant attains competency to stand trial or for a period of six months from the date of the commencement of outpatient treatment, whichever occurs first. If such probability does not exist, the court shall order the prosecuting attorney where the charges are filed or the secretary for aging and disability services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, within 21 days of receipt of the certification from the chief

medical officer of the institution or the head of the facility unless exceptional circumstances warrant delay. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A. 2021 Supp. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e), and amendments thereto, who is likely to cause harm to self or others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

(3) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in paragraph (2), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the prosecuting attorney where the charges are filed or the secretary for aging and disability services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, within 21 days of receipt of the certification from the chief medical officer of the institution or the head of the facility unless exceptional circumstances warrant delay. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A. 2021 Supp. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e), and amendments thereto, who is likely to cause harm to self or others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

(4) When reasonable grounds exist to believe that a defendant who has been adjudged incompetent to stand trial is competent, the court in which the criminal case is pending shall conduct a hearing in accordance with K.S.A. 22-3302, and amendments thereto, to determine the person's present mental condition. Such court shall give reasonable notice of such hearings to the prosecuting attorney, the defendant and the defendant's attorney of record, if any. The prosecuting attorney shall provide victim notification. If the court, following such hearing, finds the defendant to be competent, the proceedings pending against the defendant shall be resumed.

(5) A defendant committed to a public institution or facility under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment shall be credited with all of the time during which the defendant was committed and confined in such public institution or facility.

(d) (1) If the defendant is ordered or met criteria to receive an evaluation and treatment on an outpatient basis and the chief medical officer of the appropriate state, county or private institution or facility determines that the defendant's mental health condition or behaviors warrant terminating outpatient treatment services and commencing evaluation and treatment on an inpatient basis, the chief medical officer of the institution or the head of the facility shall provide a report to the court within 10 days after outpatient treatment services are terminated. Such report shall certify the date that outpatient treatment was terminated and the reason inpatient evaluation and treatment services are recommended. A copy of such report shall be provided to the chief medical officer of the state security hospital. Upon receipt of such report, the court shall issue any orders or warrants required to facilitate the sheriff of the county where the charges are filed to take the defendant into custody and transport such defendant to the state

security hospital or its agent or a state hospital or its agent for admission for inpatient services. The chief medical officer shall submit a report pursuant to subsection (e) as to whether the defendant has attained competency within 90 days of the defendant's admission to such hospital for inpatient evaluation and treatment.

(2) The court, prosecuting attorney where criminal charges are pending, the defense counsel for a defendant charged with a felony offense who is receiving outpatient evaluation and treatment services and the chief medical officer of any institution or the head of any facility where the defendant is receiving outpatient services shall provide requested documentation to the state security hospital or its agent or the state hospital or its agent for the purpose of managing inpatient admission.

(e) (1) If the defendant is charged with a felony offense, the court may order a defendant to receive inpatient evaluation and treatment at an appropriate state, county or private institution or facility after considering the defendant's mental condition, behaviors and the availability of outpatient evaluation and treatment options. The chief medical officer of the institution or the head of the facility shall certify to the court, within 90 days after the commencement of inpatient treatment, whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future.

(2) If such probability does exist, the court shall order the defendant to remain in jail or at a secure location, on pretrial release pursuant to K.S.A. 22-2802, and amendments thereto, or at an appropriate setting until the defendant attains competency to stand trial or for a period of six months from the date of the commencement of inpatient treatment, whichever occurs first. If such probability does not exist, the court shall order the prosecuting attorney where the charges are filed or the secretary for aging and disability services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, within 21 days of receipt of the certification from the chief medical officer of the institution or the head of the facility unless exceptional circumstances warrant delay. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A. 2021 Supp. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e), and amendments thereto, who is likely to cause harm to self or others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

(3) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in paragraph (2), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the prosecuting attorney where the charges are filed or the secretary for aging and disability services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, within 21 days of receipt of the certification from the chief medical officer of the institution or the head of the facility unless exceptional circumstances warrant delay. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or K.S.A. 2021 Supp. 21-5505(b), 21-5506(b), 21-5508(b), 21-5604(b) or 21-5812(b), and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in K.S.A. 59-2946(e), and amendments thereto, who is likely to

cause harm to self or others, as defined in K.S.A. 59-2946(f)(3), and amendments thereto. The other provisions of K.S.A. 59-2946(f), and amendments thereto, shall not apply.

(4) When reasonable grounds exist to believe that a defendant who has been adjudged incompetent to stand trial is competent, the court in which the criminal case is pending shall conduct a hearing in accordance with K.S.A. 22-3302, and amendments thereto, to determine the person's present mental condition. Such court shall give reasonable notice of such hearings to the prosecuting attorney, the defendant and the defendant's attorney of record, if any. The prosecuting attorney shall provide victim notification. If the court, following such hearing, finds the defendant to be competent, the proceedings pending against the defendant shall be resumed.

(5) A defendant committed to a public institution or facility under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment shall be credited with all of the time during which the defendant was committed and confined in such public institution or facility.

(f) (1) Notwithstanding the provisions of K.S.A. 59-29a22, and amendments thereto, psychotropic medications may be prescribed for any defendant who is ordered or has met the criteria to receive evaluation and treatment on an inpatient or outpatient basis at an appropriate state, county or private institution or facility.

(2) Psychotropic medications shall be prescribed, ordered and administered in conformity with accepted clinical practice. Psychotropic medication shall be administered only upon the written order of a physician or upon a verbal order noted in the defendant's medical records and subsequently signed by the physician. The attending physician shall regularly review the drug regimen of each defendant under such physician's care and shall monitor any symptoms of harmful side effects.

(3) Whenever any defendant is receiving psychotropic medications that alter the defendant's mental state in such a way as to adversely affect the defendant's judgment or hamper the defendant in preparing for or participating in any hearing provided for by this section, for two days prior to and during any such hearing, the treatment institution or facility shall not administer such medication or treatment unless such medication or treatment is necessary to sustain the defendant's life or to protect the defendant or others. Prior to the hearing, a report of all psychotropic medications or other treatment that has been administered to the defendant and a copy of any written consent signed by the defendant shall be submitted to the court. Counsel for the defendant may preliminarily examine the attending physician regarding the administration of any medication to the defendant within two days of the hearing and the effect that medication may have had on the defendant's judgment or ability to prepare for or participate in the hearing. If the court determines that medication or other treatment has been administered that adversely affects the defendant's judgment or ability to prepare for or participate in the hearing, the court may grant the defendant a reasonable continuance to allow for the defendant to be better able to prepare for or participate in the hearing. The court shall order that such medication or other treatment be discontinued until the conclusion of the hearing unless the court finds that such medication or other treatment is necessary to sustain the defendant's life or to protect the defendant or others. If the court makes such a finding, the court shall order the hearing to proceed.

(4) If a defendant who is charged with a felony is receiving treatment pursuant to this section and is not deemed a present danger to self or others objects to taking any medication prescribed for the purpose of restoring the defendant to competency, the defendant's objection shall be recorded in the defendant's medical record and written notice of such objection shall be forwarded to the medical director of the treatment institution or facility or the director's designee and to the court where the criminal charges are pending. The

medication may be administered over the defendant's objection only if the court finds that:

- (A) The medication is substantially unlikely to have side effects that may undermine the fairness of the trial;*
- (B) the medication is medically appropriate;*
- (C) less intrusive alternatives have been considered;*
- (D) the medication is necessary to advance significantly important governmental trial interests; and*
- (E) the administrative head or law enforcement official in charge of the jail has agreed to having the medication administered over the defendant's objection in the jail.*

(5) No experimental medication shall be administered without the consent of the defendant or such defendant's legal guardian.

Sec. 9. K.S.A. 2021 Supp. 22-3305 is hereby amended to read as follows: 22-3305. ~~(1)(a)~~ Whenever involuntary commitment proceedings have been commenced by the secretary for aging and disability services *or the prosecuting attorney* as required by K.S.A. 22-3303, and amendments thereto, and the defendant is not committed to a treatment *institution or facility* as a patient, the defendant shall remain in the *institution or facility* where committed pursuant to K.S.A. 22-3303, and amendments thereto. The secretary for aging and disability services *or the prosecuting attorney* shall promptly notify the court and the ~~county or district~~ *prosecuting attorney* of the county ~~in which~~ *where* the criminal proceedings are pending for the purpose of providing victim notification, of the result of the involuntary commitment proceeding.

~~(2)(b)~~ Whenever involuntary commitment proceedings have been commenced by the secretary for aging and disability services *or the prosecuting attorney* as required by K.S.A. 22-3303, and amendments thereto, and the defendant is committed to a treatment *institution or facility* as a patient but thereafter is to be discharged pursuant to the care and treatment act for mentally ill persons, the defendant shall remain in the *institution or facility* where committed pursuant to K.S.A. 22-3303, and amendments thereto, and the head of the treatment *institution or facility* shall promptly notify the court and the ~~county or district~~ *prosecuting attorney* of the county ~~in which~~ *where* the criminal proceedings are pending for the purpose of providing victim notification, that the defendant is to be discharged.

~~(c)~~ When giving notification to the court and the ~~county or district~~ *prosecuting attorney* pursuant to subsection ~~(1) (a)~~ or ~~(2) (b)~~, the treatment *institution or facility* shall include in such notification an opinion from the head of the treatment *institution or facility* as to whether or not the defendant is now competent to stand trial. Upon request of the ~~county or district~~ *prosecuting attorney*, the court may set a hearing on the issue of whether or not the defendant has been restored to competency. If such hearing request is granted, the ~~county or district~~ *prosecuting attorney* shall provide victim notification regarding the hearing date. *Such hearing request shall be filed within 14 days of completion of the notification from the head of the treatment institution or facility pursuant to subsection (a) or (b). The hearing shall take place within 21 days after receipt of the hearing request unless the court finds that exceptional circumstances warrant delay of the hearing.* If no such *hearing request* is made within 14 days after receipt of notice pursuant to subsection ~~(1) (a)~~ or ~~(2) (b)~~, the court shall order the defendant to be discharged from commitment and shall dismiss without prejudice the charges against the defendant, and the period of limitation for the prosecution for the crime charged shall not continue to run until the defendant has been determined to have attained competency in accordance with K.S.A. 22-3302, and amendments thereto. The ~~county or district~~ *prosecuting attorney* shall provide victim notification regarding the discharge order.

Sec. 10. K.S.A. 2021 Supp. 22-3428 is hereby amended to read as follows: 22-3428. ~~(1)(a)~~ *(1)* When a defendant is acquitted and the jury answers in the affirmative to the special question asked pursuant to

K.S.A. 22-3221, and amendments thereto, the defendant shall be committed to the state security hospital *or an appropriate secure facility* for safekeeping and treatment and the ~~county or district~~ prosecuting attorney shall provide victim notification. A finding of not guilty and the jury answering in the affirmative to the special question asked pursuant to K.S.A. 22-3221, and amendments thereto, shall be prima facie evidence that the acquitted defendant is presently likely to cause harm to self or others.

~~(b)~~(2) Within 90 days of the defendant's admission, the chief medical officer of the state security hospital *or licensed psychologist at the appropriate secure facility* shall send to the court a written evaluation report. Upon receipt of the report, the court shall set a hearing to determine whether or not the defendant is currently a mentally ill person. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's report *unless the court finds that exceptional circumstances warrant delay of the hearing*.

~~(e)~~(3) The court shall give notice of the hearing to the chief medical officer of the state security hospital *or licensed psychologist at the appropriate secure facility*, the ~~district or county~~ prosecuting attorney, the defendant and the defendant's attorney. The ~~county or district~~ prosecuting attorney shall provide victim notification. The court shall inform the defendant that such defendant is entitled to counsel and that counsel will be appointed to represent the defendant if the defendant is not financially able to employ an attorney as provided in K.S.A. 22-4503 et seq., and amendments thereto. The defendant shall remain at the state security hospital pending the hearing.

~~(d)~~(4) At the hearing, the defendant shall have the right to present evidence and cross-examine witnesses. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the defendant is not currently a mentally ill person, the court shall dismiss the criminal proceeding and discharge the defendant, otherwise the court may commit the defendant to the state security hospital *or an appropriate secure facility* for treatment or may place the defendant on conditional release pursuant to subsection ~~(4)~~ (d). The ~~county or district~~ prosecuting attorney shall provide victim notification regarding the outcome of the hearing.

~~(2)~~(b) Subject to the provisions of subsection ~~(3)~~ (c):

~~(a)~~(1) Whenever it appears to the chief medical officer of the state security hospital *or a licensed psychologist at the appropriate secure facility* that a person committed under subsection ~~(1)~~(d) (a)(4) is not likely to cause harm to other persons in a less restrictive hospital environment, the officer may transfer the person to any state hospital, subject to the provisions of subsection ~~(3)~~ (c). At any time subsequent thereto during which such person is still committed to a state hospital, if the chief medical officer of that hospital *or the licensed psychologist at the appropriate secure facility* finds that the person may be likely to cause harm or has caused harm, to others, such officer may transfer the person back to the state security hospital.

~~(b)~~(2) Any person committed under subsection ~~(1)~~(d) (a)(4) may be granted conditional release or discharge as an involuntary patient.

~~(3)~~(c) Before transfer of a person from the state security hospital *or appropriate secure facility* pursuant to subsection ~~(2)~~(a) (b)(1) or conditional release or discharge of a person pursuant to subsection ~~(2)~~ (b) (b)(2), the chief medical officer of the state security hospital or the state hospital where the patient is under commitment *or the licensed psychologist at the appropriate secure facility* shall give notice to the district court of the county from which the person was committed that transfer of the patient is proposed or that the patient is ready for proposed conditional release or discharge. Such notice shall include, but not be limited to: ~~(a)~~ (1) Identification of the patient; ~~(b)~~ (2) the course of treatment; ~~(e)~~ (3) a current assessment of the defendant's mental illness; ~~(d)~~ (4) recommendations for future treatment, if any; and ~~(e)~~ (5) recommendations regarding conditional release or discharge, if any. Upon receiving notice, the district court shall order

that a hearing be held on the proposed transfer, conditional release or discharge. The court shall give notice of the hearing to the *appropriate secure facility*, state hospital or state security hospital where the patient is under commitment, to the ~~district or county~~ *prosecuting* attorney of the county from which the person was originally ordered committed. The ~~county or district~~ *prosecuting* attorney shall provide victim notification regarding the hearing. The court shall order the involuntary patient to undergo a mental evaluation by a person designated by the court. A copy of all orders of the court shall be sent to the involuntary patient and the patient's attorney. The report of the court ordered mental evaluation shall be given to the ~~district or county~~ *prosecuting* attorney, the involuntary patient and the patient's attorney at least seven days prior to the hearing. The hearing shall be held within 30 days after the receipt by the court of the chief medical officer's notice *unless the court finds that exceptional circumstances warrant delay of the hearing*. The involuntary patient shall remain in the *appropriate secure facility*, state hospital or state security hospital where the patient is under commitment until the hearing on the proposed transfer, conditional release or discharge is to be held. At the hearing, the court shall receive all relevant evidence, including the written findings and recommendations of the chief medical officer of the state security hospital or the state hospital *or the licensed psychologist of the appropriate secure facility* where the patient is under commitment, and shall determine whether the patient shall be transferred to a less restrictive hospital environment or whether the patient shall be conditionally released or discharged. The patient shall have the right to present evidence at such hearing and to cross-examine any witnesses called by the ~~district or county~~ *prosecuting* attorney. At the conclusion of the hearing, if the court finds by clear and convincing evidence that the patient will not be likely to cause harm to self or others if transferred to a less restrictive hospital environment, the court shall order the patient transferred. If the court finds by clear and convincing evidence that the patient is not currently a mentally ill person, the court shall order the patient discharged or conditionally released; otherwise, the court shall order the patient to remain in the state security hospital or state hospital where the patient is under commitment. If the court orders the conditional release of the patient in accordance with subsection ~~(4)~~ (d), the court may order as an additional condition to the release that the patient continue to take prescribed medication and report as directed to a person licensed to practice medicine and surgery to determine whether or not the patient is taking the medication or that the patient continue to receive periodic psychiatric or psychological treatment. The ~~county or district~~ *prosecuting* attorney shall notify any victims of the outcome of the hearing.

~~(4)~~(d) In order to ensure the safety and welfare of a patient who is to be conditionally released and the citizenry of the state, the court may allow the patient to remain in custody at a facility under the supervision of the secretary for aging and disability services *or the head of the appropriate secure facility* for a period of time not to exceed 45 days in order to permit sufficient time for the secretary to prepare recommendations to the court for a suitable reentry program for the patient and allow adequate time for the ~~county or district~~ *prosecuting* attorney to provide victim notification. The reentry program shall be specifically designed to facilitate the return of the patient to the community as a functioning, self-supporting citizen, and may include appropriate supportive provisions for assistance in establishing residency, securing gainful employment, undergoing needed vocational rehabilitation, receiving marital and family counseling, and such other outpatient services that appear beneficial. If a patient who is to be conditionally released will be residing in a county other than the county where the district court that ordered the conditional release is located, the court shall transfer venue of the case to the district court of the other county and send a copy of all of the court's records of the proceedings to the other court. In all cases of conditional release the

court shall:

~~(a)~~(1) Order that the patient be placed under the temporary supervision of district court probation and parole services, community treatment facility or any appropriate private agency; and

~~(b)~~(2) require as a condition precedent to the release that the patient agree in writing to waive extradition in the event a warrant is issued pursuant to K.S.A. 22-3428b, and amendments thereto.

~~(5)~~(e) At any time during the conditional release period, a conditionally released patient, through the patient's attorney, or the ~~county or district~~ prosecuting attorney of the county ~~in which~~ where the district court having venue is located may file a motion for modification of the conditions of release, and the court shall hold an evidentiary hearing on the motion within 14 days of its filing. The court shall give notice of the time for the hearing to the patient and the ~~county or district~~ prosecuting attorney. If the court finds from the evidence at the hearing that the conditional provisions of release should be modified or vacated, it shall so order. If at any time during the transitional period the designated medical officer or supervisory personnel or the treatment facility informs the court that the patient is not satisfactorily complying with the provisions of the conditional release, the court, after a hearing for which notice has been given to the ~~county or district~~ prosecuting attorney and the patient, may make orders: ~~(a)~~ (1) For additional conditions of release designed to effect the ends of the reentry program; ~~(b)~~ (2) requiring the ~~county or district~~ prosecuting attorney to file a petition to determine whether the patient is a mentally ill person as provided in K.S.A. 59-2957, and amendments thereto; or ~~(c)~~ (3) requiring that the patient be committed to the *appropriate secure facility*, state security hospital or any state hospital. In cases where a petition is ordered to be filed, the court shall proceed to hear and determine the petition pursuant to the care and treatment act for mentally ill persons and that act shall apply to all subsequent proceedings. If a patient is committed to any state hospital pursuant to this act the ~~county or district~~ prosecuting attorney shall provide victim notification. The costs of all proceedings, the mental evaluation and the reentry program authorized by this section shall be paid by the county from which the person was committed.

~~(6)~~(f) In any case in which the defense that the defendant lacked the required mental state pursuant to K.S.A. 22-3220, and amendments thereto, is relied on, the court shall instruct the jury on the substance of this section.

~~(7)~~(g) As used in this section and K.S.A. 22-3428a, and amendments thereto:

~~(a)~~(1) "Likely to cause harm to self or others" means that the person is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, or evidenced by behavior causing, attempting or threatening such injury, abuse or neglect.

~~(b)~~(2) "Mentally ill person" means any person who:

(A) Is suffering from a severe mental disorder to the extent that such person is in need of treatment; and

(B) is likely to cause harm to self or others.

~~(c)~~(3) "Treatment facility" means any mental health center or clinic, psychiatric unit of a medical care facility, psychologist, physician or other institution or individual authorized or licensed by law to provide either inpatient or outpatient treatment to any patient.

Sec. 11. K.S.A. 2021 Supp. 22-3429 is hereby amended to read as follows: 22-3429. After conviction and prior to sentence and as part of the presentence investigation authorized by K.S.A. 2021 Supp. 21-6703, and amendments thereto, or for crimes committed on or after July 1, 1993, a presentence investigation report as provided in K.S.A. 2021 Supp. 21-6813, and amendments thereto, the trial judge may order the defendant committed to the *state security hospital* for mental examination, evaluation and report. ~~If the defendant is convicted of a felony, the commitment shall be to the state security hospital or any~~

~~suitable local mental health facility. If the defendant is convicted of a misdemeanor, the commitment shall be to a state hospital or any suitable local mental health facility. If adequate private facilities are available and if the defendant is willing to assume the expense thereof, commitment may be to a private hospital.~~ A report of the examination and evaluation shall be furnished *by the chief medical officer* to the judge and shall be made available to the prosecuting attorney and counsel for the defendant. A defendant may not be detained for more than 120 days under a commitment made under this section.

Sec. 12. K.S.A. 22-3301 and K.S.A. 2021 Supp. 21-5111, 21-5602, 21-5701, 22-2807, 22-2902, 22-3302, 22-3303, 22-3305, 22-3428 and 22-3429 are hereby repealed.

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

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.