

HOUSE BILL No. 2607

AN ACT concerning civil actions; relating to civil commitment pursuant to the Kansas sexually violent predator act; requiring notice of release of a person who may be a sexually violent predator to the attorney general and multidisciplinary team; time; providing for detention during proceedings; relating to habeas corpus; clarifying time limitations for filing; amending K.S.A. 2021 Supp. 59-29a02, 59-29a03, 59-29a05 and 60-1507 and repealing the existing sections.

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

Section 1. K.S.A. 2021 Supp. 59-29a02 is hereby amended to read as follows: 59-29a02. As used in this act:

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

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

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

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

(e) "Sexually violent offense" means:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2021 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or K.S.A. 2021 Supp. 21-5506(a), and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or K.S.A. 2021 Supp. 21-5506(b), and amendments thereto;

(4) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) and (a)(3), prior to its repeal, or K.S.A. 2021 Supp. 21-5504(a)(3) and (a)(4), and amendments thereto;

(5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or K.S.A. 2021 Supp. 21-5504(b), and amendments thereto;

(6) indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its repeal, or K.S.A. 2021 Supp. 21-5508(a), and amendments thereto;

(7) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or K.S.A. 2021 Supp. 21-5508(b), and amendments thereto;

(8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2021 Supp. 21-5510, and amendments thereto;

(9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or K.S.A. 2021 Supp. 21-5505(b), and amendments thereto;

(10) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or K.S.A. 2021 Supp. 21-5604(b), and amendments thereto;

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

(12) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 and 21-3303, prior to their repeal, or K.S.A. 2021 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent offense as defined in this subsection; or

(13) any act which either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this

act, has been determined beyond a reasonable doubt to have been sexually motivated.

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

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

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

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

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

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

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

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

Sec. 2. K.S.A. 2021 Supp. 59-29a03 is hereby amended to read as follows: 59-29a03. (a) *(1) Prior to July 1, 2023*, when it appears that a person may meet the criteria of a sexually violent predator as defined in K.S.A. 59-29a02, and amendments thereto, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection (f); *Such notice shall be given 90 days prior to the anticipated release of a person and includes, but is not limited to:*

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

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

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

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

(2) On and after July 1, 2023, and prior to July 1, 2024, when it appears that a person may meet the criteria of a sexually violent predator as defined in K.S.A. 59-29a02, and amendments thereto, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection (f). Such notice shall be given 90 days to two years prior to

the anticipated release of a person and includes, but is not limited to:

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

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

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

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

(3) On and after July 1, 2024, when it appears that a person may meet the criteria of a sexually violent predator as defined in K.S.A. 59-29a02, and amendments thereto, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection (f). Such notice shall be given two years prior to the anticipated release of a person and includes, but is not limited to:

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

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

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

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

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

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

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

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

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

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

(d) The permitted disclosures required to be submitted to the

attorney general under this section shall be deemed to be in response to the attorney general's civil demand for relevant and material information to investigate whether a petition shall be filed. The information provided shall be specific to the purposes of the Kansas sexually violent predator act and as limited in scope as reasonably practicable.

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

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

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

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

Sec. 3. K.S.A. 2021 Supp. 59-29a05 is hereby amended to read as follows: 59-29a05. (a) Upon filing of a petition under K.S.A. 59-29a04, and amendments thereto, the ~~judge court~~ shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the ~~judge court~~ shall:

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

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

(b) ~~Within 72 hours after a person is taken into custody pursuant to subsection (a), or~~ As soon as reasonably practicable or agreed upon by the parties, ~~such person shall~~ *after the filing of a petition under*

K.S.A. 59-29a04, and amendments thereto, the court shall order that the person named in the petition be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the ~~detained~~ person is a sexually violent predator. At this hearing the court shall:

(1) Verify the ~~detainer's~~ *person's* identity; and
(2) determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

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

(1) To be represented by counsel;
(2) to present evidence on such person's behalf;
(3) to cross-examine witnesses who testify against such person;
and

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

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

(e) The person conducting the evaluation ordered by the court pursuant to this section shall notify the ~~detained~~ person *being evaluated* of the following:

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

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

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

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

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

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

Sec. 4. K.S.A. 2021 Supp. 60-1507 is hereby amended to read as follows: 60-1507. (a) *Motion attacking sentence.* A prisoner in custody under sentence of a court of general jurisdiction claiming the right to be released upon the ground that the sentence was imposed in violation of the constitution or laws of the United States, or the constitution or laws of the state of Kansas, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may, pursuant to the time limitations imposed by subsection (f), move the court which imposed the sentence to vacate, set aside or correct the

sentence.

(b) *Hearing and judgment.* Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. The court may entertain and determine such motion without requiring the production of the prisoner at the hearing. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or is otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence said prisoner or grant a new trial or correct the sentence as may appear appropriate.

(c) *Successive motions.* The sentencing court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

(d) *Appeal.* An appeal may be taken to the appellate court as provided by law from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(e) *Exclusiveness of remedy.* An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced said applicant, or that such court has denied said applicant relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of said applicant's detention.

(f) *Time limitations.* (1) Any action under this section must be brought within one year of:

(A) The final order of the last appellate court in this state to exercise jurisdiction on a direct appeal or the termination of such appellate jurisdiction; ~~or~~

(B) the denial of a petition for writ of certiorari to the United States supreme court or issuance of such court's final order following granting such petition; *or*

(C) *the decision of the district court denying a prior motion under this section, the opinion of the last appellate court in this state to exercise jurisdiction on such prior motion or the denial of the petition for review on such prior motion, whichever is later.*

(2) The time limitation herein may be extended by the court only to prevent a manifest injustice.

(A) For purposes of finding manifest injustice under this section, the court's inquiry shall be limited to determining why the prisoner failed to file the motion within the one-year time limitation or whether the prisoner makes a colorable claim of actual innocence. As used herein, the term actual innocence requires the prisoner to show it is more likely than not that no reasonable juror would have convicted the prisoner in light of new evidence.

(B) If the court makes a manifest-injustice finding, it must state the factual and legal basis for such finding in writing with service to the parties.

(3) If the court, upon its own inspection of the motions, files and records of the case, determines the time limitations under this section have been exceeded and that the dismissal of the motion would not equate with manifest injustice, the district court must dismiss the motion as untimely filed.

(g) *The amendments made to subsection (f) by this act shall not bar actions under this section that are brought within one year of the effective date of this act.*

Sec. 5. K.S.A. 2021 Supp. 59-29a02, 59-29a03, 59-29a05 and 60-1507 are hereby repealed.

Sec. 6. 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 passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.