

As Amended by House Committee

Session of 2017

HOUSE BILL No. 2306

By Committee on Judiciary

2-7

1 AN ACT concerning the Kansas sexually violent predator act; relating to
2 examinations; transitional release; conditional release; amending
3 K.S.A. 2016 Supp. 59-29a08, 59-29a10 and 59-29a18 and repealing the
4 existing sections.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2016 Supp. 59-29a08 is hereby amended to read as
8 follows: 59-29a08. (a) Each person committed under the Kansas sexually
9 violent predator act shall have a current examination of the person's mental
10 condition made once every year. The secretary shall provide the committed
11 person with an annual written notice of the person's right to petition the
12 court for release over the secretary's objection. The notice shall contain a
13 waiver of rights. The secretary shall also forward the annual report, as well
14 as the annual notice and waiver form, to the court that committed the
15 person under the Kansas sexually violent predator act. *The court shall file*
16 *the notice and the report upon receipt.*

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

26 (c) The person may retain, or if the person is indigent and so requests
27 the court may appoint a qualified professional person to examine such
28 person, an examiner pursuant to K.S.A. 60-235, and amendments thereto,
29 and such expert or professional person the examiner shall have access to
30 all available records concerning the person. ~~The court that committed the~~
31 ~~person under the Kansas sexually violent predator act shall then conduct~~
32 ~~an annual review of the status of the committed person's mental condition.~~
33 *If the person is indigent and makes a request for an examiner, the court*
34 *shall determine whether the services are necessary and shall determine*
35 *the reasonable compensation for such services. The court, before*
36 *appointing an examiner, shall consider factors including the person's*

1 *compliance with institutional requirements and the person's participation*
2 *in treatment to determine whether the person's progress justifies the costs*
3 *of an examination. The appointment of an examiner is discretionary.*

4 *(d) At the annual review hearing, the burden of proof shall be upon*
5 *the person to show probable cause to believe the person's mental*
6 *abnormality or personality disorder has significantly changed so that the*
7 *person is safe to be placed in transitional release. The report, or a copy*
8 *thereof, of the findings of a qualified expert shall be admissible into*
9 *evidence in the annual review hearing in the same manner and with the*
10 *same force and effect as if the qualified expert had testified in person. If*
11 *the person does not participate in the prescribed treatment plan, the*
12 *person is presumed to be unable to show probable cause to believe the*
13 *person is safe to be released.*

14 *(e) The committed person shall have a right to have an attorney*
15 *represent the person at the annual review hearing to determine probable*
16 *cause, but the person is not entitled to be present at the hearing.*

17 ~~*(b) Nothing contained in the Kansas sexually violent predator act*~~
18 ~~*shall prohibit the person in conditional release from otherwise petitioning*~~
19 ~~*the court for discharge at the annual review hearing.*~~

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

27 ~~*(e)(g)*~~ *If the court at the annual review hearing determines that*
28 *probable cause exists to believe that the person's mental abnormality or*
29 *personality disorder has so significantly changed so that the person is safe*
30 *to be placed in transitional release, then the court shall set a hearing for*
31 *transitional release on the issue. The committed person shall be entitled to*
32 *be present and entitled to the benefit of all constitutional protections that*
33 ~~*were afforded the person pursuant to K.S.A. 59-29a06, and amendments*~~
34 ~~*thereto*~~ *assistance of counsel. The attorney general shall represent the state*
35 *and shall have a right to have the committed person evaluated by experts*
36 *chosen by the state. The committed person shall also have the right to have*
37 *experts evaluate the person on the person's behalf and the court shall*
38 *appoint an expert if the person is indigent and requests an appointment.*
39 *The burden of proof at the hearing for transitional release shall be upon the*
40 *state to prove beyond a reasonable doubt that the committed person's*
41 *mental abnormality or personality disorder remains such that the person is*
42 *not safe to be placed in transitional release and if transitionally released is*
43 *likely to engage in acts of sexual violence.*

1 ~~(d)~~(h) If, after the hearing *for transitional release*, the court is
2 convinced beyond a reasonable doubt that the person is not appropriate for
3 transitional release, the court shall order that the person remain in secure
4 commitment. Otherwise, the court shall order that the person be placed in
5 transitional release.

6 ~~(e)~~(i) If the court determines that the person should be placed in
7 transitional release, the secretary shall transfer the person to the
8 transitional release program. The secretary may contract for services to be
9 provided in the transitional release program. During any period the person
10 is in transitional release, that person shall comply with any rules or
11 regulations the secretary may establish for this program and every
12 directive of the treatment staff of the transitional release program.

13 ~~(f)~~(j) At any time during which the person is in the transitional
14 release program and the treatment staff determines that the person has
15 violated any rule, regulation or directive associated with the transitional
16 release program, the treatment staff may remove the person from the
17 transitional release program and return the person to the secure
18 commitment facility, or may request the district court to issue an
19 emergency ex parte order directing any law enforcement officer to take the
20 person into custody and return the person to the secure commitment
21 facility. Any such request may be made verbally or by telephone, but shall
22 be followed in written, facsimile or electronic form delivered to the court
23 by not later than 5:00 p.m. of the first day the district court is open for the
24 transaction of business after the verbal or telephonic request was made.

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

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

40 Sec. 2. K.S.A. 2016 Supp. 59-29a10 is hereby amended to read as
41 follows: 59-29a10. (a) (1) If the secretary determines that the person's
42 mental abnormality or personality disorder has ~~so~~ *significantly* changed *so*
43 that the person is not likely to engage in repeat acts of sexual violence if

1 placed in transitional release, the secretary shall authorize the person to
2 petition the court for transitional release. The petition shall be served upon
3 the court and the attorney general. The court, upon service of the petition
4 for transitional release, shall issue notice of a hearing to be scheduled
5 within 30 days. The attorney general shall represent the state, and shall
6 have the right to have the petitioner examined by an expert or professional
7 person of such attorney's choice. The burden of proof shall be upon the
8 attorney general to show beyond a reasonable doubt that the petitioner's
9 mental abnormality or personality disorder remains such that the petitioner
10 is not safe to be at large and that if placed in transitional release is likely to
11 engage in repeat acts of sexual violence.

12 ~~(b)(2)~~ If, after the hearing, the court is convinced beyond a reasonable
13 doubt that the person is not sufficiently safe to warrant transitional release,
14 the court shall order that the person remain in secure commitment.
15 Otherwise, the court shall order that the person be placed in transitional
16 release.

17 ~~(e)(3)~~ The provisions of K.S.A. 59-29a08~~(e), (f) and (g)~~ (i), (j) and
18 (k), and amendments thereto, shall apply to a transitional release pursuant
19 to this section.

20 (b) (1) *If the secretary determines that the person's mental*
21 *abnormality or personality disorder has significantly changed so that the*
22 *person is not likely to engage in repeat acts of sexual violence if placed in*
23 *conditional release, the secretary shall authorize the person to petition the*
24 *court for conditional release. The petition shall be served upon the court*
25 *and the attorney general. The court, upon service of the petition for*
26 *conditional release, shall issue notice of a hearing to be scheduled within*
27 *30 days. The attorney general shall represent the state, and shall have the*
28 *right to have the petitioner examined by an expert or professional person*
29 *of such attorney's choice. The burden of proof shall be upon the attorney*
30 *general to show beyond a reasonable doubt that the petitioner's mental*
31 *abnormality or personality disorder remains such that the petitioner is not*
32 *safe to be at large and that if placed in conditional release is likely to*
33 *engage in repeat acts of sexual violence.*

34 (2) *If, after the hearing, the court is convinced beyond a reasonable*
35 *doubt that the person is not sufficiently safe to warrant conditional*
36 *release, the court shall order that the person remain either in secure*
37 *commitment or in transitional release. Otherwise, the court shall order*
38 *that the person be placed in conditional release.*

39 (3) *The provisions of K.S.A. 59-29a18(h) and 59-29a19(a), (d) and*
40 *(e), and amendments thereto, shall apply to a conditional release pursuant*
41 *to this section.*

42 Sec. 3. K.S.A. 2016 Supp. 59-29a18 is hereby amended to read as
43 follows: 59-29a18. (a) During any period the person is in transitional

1 release, the person committed under this act at least annually, and at any
2 other time deemed appropriate by the treatment staff, shall be examined by
3 the treatment staff to determine if the person's mental abnormality or
4 personality disorder has ~~so~~ *significantly* changed so as to warrant such
5 person being considered for conditional release. ~~The treatment staff shall~~
6 ~~forward a report of its examination to the court. The court shall review the~~
7 ~~same. If the court determines that probable cause exists to believe that the~~
8 ~~person's mental abnormality or personality disorder has so changed that~~
9 ~~the person is safe to be placed in conditional release, the court shall then~~
10 ~~set a hearing on the issue. The attorney general shall have the burden of~~
11 ~~proof to show beyond a reasonable doubt that the person's mental~~
12 ~~abnormality or personality disorder remains such that the person is not safe~~
13 ~~to be at large and that if placed on conditional release is likely to engage in~~
14 ~~repeat acts of sexual violence. The person shall have the same rights as~~
15 ~~enumerated in K.S.A. 59-29a06, and amendments thereto. Subsequent to~~
16 ~~either a court review or a hearing, the court shall issue an appropriate order~~
17 ~~with findings of fact. The order of the court shall be provided to the~~
18 ~~attorney general, the person and the secretary. *The secretary shall provide*~~
19 ~~*the person with a written notice of the person's right to petition the court*~~
20 ~~*for release over the secretary's objection. The notice shall contain a*~~
21 ~~*waiver of rights. The secretary shall also forward the report, as well as the*~~
22 ~~*notice and waiver form, to the court that committed the person under the*~~
23 ~~*Kansas sexually violent predator act. The court shall file the notice and*~~
24 ~~*the report upon receipt.*~~

25 (b) *The person must file a request for an annual review hearing*
26 *within 45 days after the date the court files the annual written notice*
27 *pursuant to subsection (a). Failure to request a hearing within 45 days*
28 *pursuant to this subsection shall waive the person's right to a hearing until*
29 *the next annual report is filed by the court. A contested annual review*
30 *hearing for conditional release shall consist of consideration about*
31 *whether the person is entitled to conditional release from transitional*
32 *release. Only a person in transitional release shall be permitted to petition*
33 *for conditional release. No person in transitional release shall be*
34 *permitted to petition for final discharge.*

35 (c) *The person may retain, or if the person is indigent and so*
36 *requests, the court may appoint, an examiner pursuant to K.S.A. 60-235,*
37 *and amendments thereto, and the examiner shall have access to all*
38 *available records concerning the person. If the person is indigent and*
39 *makes a request for an examiner, the court shall determine whether the*
40 *services are necessary and shall determine the reasonable compensation*
41 *for such services. The court, before appointing an examiner, shall consider*
42 *factors including the person's compliance with institutional requirements*
43 *and the person's participation in treatment to determine whether the*

1 *person's progress justifies the costs of an examination. The appointment of*
2 *an examiner is discretionary.*

3 *(d) At the annual review hearing, the burden of proof shall be upon*
4 *the person to show probable cause to believe the person's mental*
5 *abnormality or personality disorder has significantly changed so that the*
6 *person is safe to be placed in conditional release. The report, or a copy*
7 *thereof, of the findings of a qualified expert shall be admissible into*
8 *evidence in the annual review hearing in the same manner and with the*
9 *same force and effect as if the qualified expert had testified in person. If*
10 *the person does not participate in the prescribed treatment plan, the*
11 *person is presumed to be unable to show probable cause to believe the*
12 *person is safe to be released.*

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

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

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

38 *(h) If, after the hearing for conditional release, the court is convinced*
39 *beyond a reasonable doubt that the person is not appropriate for*
40 *conditional release, the court shall order that the person remain either in*
41 *secure commitment or in transitional release. Otherwise, the court shall*
42 *order that the person be placed on conditional release.*

43 *(i) Subsequent to either a court review or a hearing, the court shall*

1 *issue an appropriate order with findings of fact. The order of the court*
2 *shall be provided to the attorney general, the person and the secretary.*

3 **(j) For the purposes of this section, if the person is indigent and**
4 **without counsel, the court shall appoint counsel to assist such person.**

5 Sec. 4. K.S.A. 2016 Supp. 59-29a08, 59-29a10 and 59-29a18 are
6 hereby repealed.

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