

## 2021 Kansas Statutes

59-29a08. **Same; examination; annual review hearing for transitional release; rights and procedures; court orders; transitional release program.** (a) Each person committed under the Kansas sexually violent predator act shall have a current examination of the person's mental condition made once every year. The secretary shall provide the person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall also forward the annual report, as well as the annual notice and waiver form, to the court that committed the person under the Kansas sexually violent predator act. The court shall file the notice and the report upon receipt and forward the file-stamped copy to the attorney general. The attorney general shall forward a file-stamped copy of the annual written notice and annual report to the secretary upon receipt.

(b) The person must file a request for an annual review hearing within 45 days after the date the court files the annual written notice. Failure to request a hearing within 45 days pursuant to this subsection waives the person's right to a hearing until the next annual report is filed by the court. A contested annual review hearing for transitional release shall consist of consideration about whether the person is entitled to transitional release. Only a person in transitional release shall be permitted to petition for conditional release. Only a person in conditional release shall be permitted to petition for final discharge after a minimum of five years has passed in which the person has been free of violations of conditions of such person's treatment plan, as provided in K.S.A. 59-29a19(e), and amendments thereto.

(c) The person may retain, or if the person is indigent and so requests the court may appoint, an examiner pursuant to K.S.A. 60-235, and amendments thereto, and the examiner shall have access to all available records concerning the person. If the person is indigent and makes a request for an examiner, the court shall determine whether the services are necessary and shall determine the reasonable compensation for such services. The court, before appointing an examiner, shall consider factors including the person's compliance with institutional requirements and the person's participation in treatment to determine whether the person's progress justifies the costs of an examination. The appointment of an examiner is discretionary.

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

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

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

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

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

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

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

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

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

**History:** L. 1994, ch. 316, § 8; L. 1995, ch. 193, § 7; L. 1998, ch. 198, § 4; L. 2003, ch. 152, § 5; L. 2007, ch. 170, § 5; L. 2010, ch. 5, § 5; L. 2015, ch. 95, § 8; L. 2017, ch. 83, § 1; L. 2018, ch. 94, § 3; July 1.