

As Amended by House Committee

Session of 2023

HOUSE BILL No. 2353

By Committee on Judiciary

2-8

1 AN ACT concerning the care and treatment act for mentally ill persons;
2 increasing the time allowed for an initial continued treatment order;
3 adding criteria to determine when outpatient treatment may be ordered;
4 amending K.S.A. 59-2958, 59-2959 and 59-2969 and K.S.A. ~~2022~~
5 **2023** Supp. 59-2967 and repealing the existing sections.
6

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

8 Section 1. K.S.A. 59-2958 is hereby amended to read as follows: 59-
9 2958. (a) At the time the petition for the determination of whether a person
10 is a mentally ill person subject to involuntary commitment for care and
11 treatment under this act is filed, or any time thereafter prior to the trial
12 upon the petition as provided for in K.S.A. 59-2965, and amendments
13 thereto, the petitioner may request in writing that the district court issue an
14 ex parte emergency order including either or both of the following:

15 (1) An order directing any law enforcement officer to take the person
16 named in the order into custody and transport the person to a designated
17 treatment facility or other suitable place willing to receive and detain the
18 person; *or*

19 (2) an order authorizing any named treatment facility or other place to
20 detain or continue to detain the person until the further order of the court
21 or until the ex parte emergency custody order shall expire.

22 (b) No ex parte emergency custody order shall provide for the
23 detention of any person at a state psychiatric hospital unless a written
24 statement from a qualified mental health professional authorizing such
25 admission and detention at a state psychiatric hospital has been filed with
26 the court.

27 (c) No ex parte emergency custody order shall provide for the
28 detention of any person in a nonmedical facility used for the detention of
29 persons charged with or convicted of a crime.

30 (d) If no other suitable facility ~~at which~~ *where* such person may be
31 detained is willing to accept the person, then the participating mental
32 health center for that area shall provide a suitable place to detain the
33 person until the further order of the court or until the ex parte emergency
34 custody order shall expire.

35 (e) An ex parte emergency custody order issued under this section
36 shall expire at 5:00 p.m. of the ~~second~~ *third* day the district court is open

1 for the transaction of business after the date of its issuance, ~~which~~ and the
2 expiration date shall be stated in the order.

3 (f) The district court shall not issue successive ex parte emergency
4 custody orders.

5 (g) In lieu of issuing an ex parte emergency custody order, the court
6 may allow the person with respect to whom the request was made to
7 remain at liberty, subject to such conditions as the court may impose.

8 Sec. 2. K.S.A. 59-2959 is hereby amended to read as follows: 59-
9 2959. (a) At the time that the petition for determination of mental illness is
10 filed, or any time thereafter prior to the trial upon the petition as provided
11 for in K.S.A. 59-2965, and amendments thereto, the petitioner may request
12 in writing that the district court issue a temporary custody order. The
13 request shall state:

14 (1) The reasons why the person should be detained prior to the
15 hearing on the petition;

16 (2) whether an ex parte emergency custody order has been requested
17 or was granted; and

18 (3) the present whereabouts of the person named in the petition.

19 (b) Upon the filing of a request for a temporary custody order, the
20 court shall set the matter for a hearing ~~which~~ that shall be held not later
21 than the close of business of the ~~second~~ third day the district court is open
22 for the transaction of business after the filing of the request. The petitioner
23 and the person with respect to whom the request has been filed shall be
24 notified of the time and place of the hearing and that they shall each be
25 afforded an opportunity to appear at the hearing, to testify and to present
26 and cross-examine witnesses. If the person with respect to whom the
27 request has been filed has not yet retained or been appointed an attorney,
28 the court shall appoint an attorney for the person.

29 (c) (1) At the hearing scheduled upon the request, the person with
30 respect to whom the request has been filed shall be present unless the
31 attorney for the person requests that the person's presence be waived and
32 the court finds that the person's presence at the hearing would be injurious
33 to the person's welfare. The court shall enter in the record of the
34 proceedings the facts upon which the court has found that the presence of
35 the person at the hearing would be injurious to such person's welfare.
36 However, if the person with respect to whom the request has been filed
37 states in writing to the court or to such person's attorney that such person
38 wishes to be present at the hearing, the person's presence cannot be
39 waived.

40 (2) The hearing shall be conducted in as informal a manner as may be
41 consistent with orderly procedure and in a physical setting not likely to
42 have a harmful effect on the person with respect to whom the request has
43 been filed. All persons not necessary for the conduct of the proceedings

1 may be excluded. The court shall receive all relevant and material
2 evidence—~~which~~ *that* may be offered. The rules governing evidentiary and
3 procedural matters shall be applied to hearings under this section in a
4 manner so as to facilitate informal, efficient presentation of all relevant,
5 probative evidence and resolution of issues with due regard to the interests
6 of all parties. The facts or data upon which a duly qualified expert bases an
7 opinion or inference may be those perceived by or made known to the
8 expert at or before the hearing and if of a type reasonably relied upon by
9 experts in their particular field in forming opinions or inferences upon the
10 subject, the facts or data need not be admissible in evidence. The expert
11 may testify in terms of opinion or inference and give the expert's reasons
12 therefor without prior disclosure of the underlying facts or data unless the
13 court requires otherwise. If requested on cross-examination, the expert
14 shall disclose the underlying facts or data.

15 (3) If the petitioner is not represented by counsel, the county or
16 district attorney shall represent the petitioner, prepare all necessary papers,
17 appear at the hearing and present such evidence as the county or district
18 attorney determines to be of aid to the court in determining whether or not
19 there is probable cause to believe that the person with respect to whom the
20 request has been filed is a mentally ill person subject to involuntary
21 commitment for care and treatment under this act, and that it would be in
22 the best interests of the person to be detained until the trial upon the
23 petition.

24 (d) After the hearing, if the court determines from the evidence that:

25 (1) There is probable cause to believe that the person with respect to
26 whom the request has been filed is a mentally ill person subject to
27 involuntary commitment for care and treatment under this act, and that it is
28 in the best interests of the person to be detained until the trial upon the
29 petition, the court shall issue a temporary custody order;

30 (2) there is probable cause to believe that the person with respect to
31 whom the request has been filed is a mentally ill person subject to
32 involuntary commitment for care and treatment under this act, but that it
33 would not be in their best interests to be detained until the trial upon the
34 petition, the court may allow the person to be at liberty, subject to such
35 conditions as the court may impose; *or*

36 (3) there is not probable cause to believe that the person with respect
37 to whom the request has been filed is a mentally ill person subject to
38 involuntary commitment for care and treatment under this act, the court
39 shall terminate the proceedings and release the person.

40 (e) (1) A temporary custody order issued pursuant to this section may
41 direct any law enforcement officer or any other person designated by the
42 court to take the person named in the order into custody and transport them
43 to a designated treatment facility, and authorize the designated treatment

1 facility to detain and treat the person until the trial upon the petition.

2 (2) No temporary custody order shall provide for the detention and
3 treatment of any person at a state psychiatric hospital unless a written
4 statement from a qualified mental health professional authorizing such
5 admission and detention at a state psychiatric hospital has been filed with
6 the court.

7 (3) No temporary custody order shall provide for the detention of any
8 person in a nonmedical facility used for the detention of persons charged
9 with or convicted of a crime.

10 (4) If no other suitable facility ~~at which~~ *where* such person may be
11 detained is willing to accept the person, then the participating mental
12 health center for that area shall provide a suitable place to detain the
13 person until the further order of the court or until the trial upon the
14 petition.

15 Sec. 3. K.S.A. ~~2022~~ **2023** Supp. 59-2967 is hereby amended to read
16 as follows: 59-2967. (a) An order for outpatient treatment may be entered
17 by the court at any time in lieu of any type of order ~~which that~~ would have
18 required inpatient care and treatment if the court finds that the patient ~~is:~~

19 ~~(1) (A) Likely to comply with an outpatient treatment order; and that~~
20 ~~the patient will~~

21 ~~(B) not likely to be a danger to the community or be likely to cause~~
22 ~~harm to self or others while subject to an outpatient treatment order; or~~

23 ~~(2) in need of outpatient treatment to prevent a relapse or~~
24 ~~deterioration that would likely result in:~~

25 ~~(A) Serious bodily harm to self or others;~~

26 ~~(B) a substantial harm to the patient's well-being;~~

27 ~~(C) substantial damage to another person's property; or~~

28 ~~(D) serious physical or mental debilitation in the patient~~ **Will meet**

29 **the criteria for required inpatient care and treatment in the proximate**
30 **future without such outpatient treatment and is only likely to attend**
31 **outpatient treatment if there is a court order mandating such**
32 **treatment; or**

33 **(2) is, if left untreated, reasonably expected to experience an**
34 **increase in the symptoms caused by the illness that would result in the**
35 **need for inpatient care and treatment in the proximate future and**
36 **whose mental illness has previously caused the patient to refuse**
37 **needed and appropriate mental health services in the community.**

38 (b) No order for outpatient treatment shall be entered unless the head
39 of the outpatient treatment facility has consented to treat the patient on an
40 outpatient basis under the terms and conditions set forth by the court,
41 except that no order for outpatient treatment shall be refused by a
42 participating mental health center.

43 (c) If outpatient treatment is ordered, the order may state specific

1 conditions to be followed by the patient, but shall include the general
2 condition that the patient is required to comply with all directives and
3 treatment as required by the head of the outpatient treatment facility or the
4 head's designee. *Such directives and treatment plans shall be provided to*
5 *the court in writing within 10 business days after the order for outpatient*
6 *treatment is issued. Failure to provide such directives and treatment plans*
7 *to the court as required by this subsection is not grounds for dismissal of*
8 *the order unless the failure is made in bad faith.* The court may also make
9 such orders as are appropriate to provide for monitoring the patient's
10 progress and compliance with outpatient treatment. Within any outpatient
11 order for treatment the court shall specify the period of treatment as
12 provided for in ~~subsection (a) of K.S.A. 59-2966(a) or subsection (f) of~~
13 ~~K.S.A. 59-2969(f)~~, and amendments thereto.

14 (d) The court shall retain jurisdiction to modify or revoke the order
15 for outpatient treatment at any time on its own motion, on the motion of
16 any counsel of record or upon notice from the treatment facility of any
17 need for new conditions in the order for outpatient treatment or of material
18 noncompliance by the patient with the order for outpatient treatment.
19 However, if the venue of the matter has been transferred to another court,
20 then the court having venue of the matter shall have such jurisdiction to
21 modify or revoke the outpatient treatment order. Revocation or
22 modification of an order for outpatient treatment may be made ex parte by
23 order of the court in accordance with the provisions of subsections (e) or
24 (f).

25 (e) The treatment facility shall immediately report to the court any
26 material noncompliance by the patient with the outpatient treatment order.
27 Such notice may be verbal or by telephone but shall be followed by a
28 verified written, facsimile or electronic notice sent to the court, to counsel
29 for all parties and, as appropriate, to the head of the inpatient treatment
30 facility designated to receive the patient, by not later than 5:00 p.m. of the
31 first day the district court is open for the transaction of business after the
32 verbal or telephonic communication was made to the court. Upon receipt
33 of verbal, telephone, or verified written, facsimile or electronic notice of
34 material noncompliance, the court may enter an ex parte emergency
35 custody order providing for the immediate detention of the patient in a
36 designated inpatient treatment facility except that the court shall not order
37 the detention of the patient at a state psychiatric hospital, unless a written
38 statement from a qualified mental health professional authorizing such
39 detention at a state psychiatric hospital has been filed with the court. Any
40 ex parte emergency custody order issued by the court under this subsection
41 shall expire at 5:00 p.m. of the ~~second~~ *third* day the district court is open
42 for the transaction of business after the patient is taken into custody. The
43 court shall not enter successive ex parte emergency custody orders.

1 (f) (1) Upon the taking of a patient into custody pursuant to an ex
2 parte emergency custody order ~~revoking a previously issued order for~~
3 ~~outpatient treatment~~ **revoking a previously issued order for outpatient**
4 **treatment** and ordering the patient to involuntary inpatient care the court
5 shall set the matter for hearing not later than the close of business on the
6 ~~second~~ *third* day the court is open for business after the patient is taken
7 into custody. Notice of the hearing shall be given to the patient, the
8 patient's attorney, the patient's legal guardian, the petitioner or the county
9 or district attorney as appropriate, the head of the outpatient treatment
10 facility and the head of the inpatient treatment facility, similarly as
11 provided for in K.S.A. 59-2963, and amendments thereto.

12 (2) Upon the entry of an ex parte order modifying a previously issued
13 order for outpatient treatment, but allowing the patient to remain at liberty,
14 a copy of the order shall be served upon the patient, the patient's attorney,
15 the county or district attorney and the head of the outpatient treatment
16 facility similarly as provided for in K.S.A. 59-2963, and amendments
17 thereto. Thereafter, any party to the matter, including the petitioner, the
18 county or district attorney or the patient, may request a hearing on the
19 matter if the request is filed within five days from the date of service of the
20 ex parte order upon the patient. The court may also order such a hearing on
21 its own motion within five days from the date of service of the notice. If
22 no request or order for hearing is filed within the five-day period, the ex
23 parte order and the terms and conditions set out in the ex parte order shall
24 become the final order of the court substituting for any previously entered
25 order for outpatient treatment. If a hearing is requested, a formal written
26 request for revocation or modification of the outpatient treatment order
27 shall be filed by the county or district attorney or the petitioner and a
28 hearing shall be held thereon within 5 days after the filing of the request.

29 (g) The hearing held pursuant to subsection (f) shall be conducted in
30 the same manner as hearings provided for in K.S.A. 59-2959, and
31 amendments thereto. Upon the completion of the hearing, if the court finds
32 by clear and convincing evidence that the patient violated any condition of
33 the outpatient treatment order, the court may enter an order for inpatient
34 treatment, except that the court shall not order treatment at a state
35 psychiatric hospital unless a written statement from a qualified mental
36 health professional authorizing such treatment at a state psychiatric
37 hospital has been filed with the court, or may modify the order for
38 outpatient treatment with different terms and conditions in accordance
39 with this section.

40 (h) The outpatient treatment facility shall comply with the provisions
41 of K.S.A. 59-2969, and amendments thereto, concerning the filing of
42 written reports for each period of treatment during the time any outpatient
43 treatment order is in effect and the court shall receive and process such

1 reports in the same manner as reports received from an inpatient treatment
2 facility.

3 Sec. 4. K.S.A. 59-2969 is hereby amended to read as follows: 59-
4 2969. (a) At least 14 days prior to the end of each period of treatment, as
5 set out in the court order for such treatment, the head of the treatment
6 facility furnishing treatment to the patient shall cause to be filed with the
7 court a written report summarizing the treatment provided and the findings
8 and recommendations of the treatment facility concerning the need for
9 further treatment for the patient. Upon the filing of this written report, the
10 court shall notify the patient's attorney of record that this written report has
11 been filed. If there is no attorney of record for the patient, the court shall
12 appoint an attorney and notify such attorney that the written report has
13 been filed.

14 (b) When the attorney for the patient has received notice that the
15 treatment facility has filed with the district court its written report, the
16 attorney shall consult with the patient to determine whether the patient
17 desires a hearing. If the patient desires a hearing, the attorney shall file a
18 written request for a hearing with the district court, ~~which~~ and the request
19 shall be filed not later than the last day ending any period of treatment as
20 specified in the court's order for treatment issued pursuant to K.S.A. 59-
21 2966 or 59-2967, and amendments thereto, or the court's last entered order
22 for continued treatment issued pursuant to subsection (f). If the patient
23 does not desire a hearing, the patient's attorney shall file with the court a
24 written statement that the attorney has consulted with the patient; the
25 manner in which the attorney has consulted with the patient; that the
26 attorney has fully explained to the patient the patient's right to a hearing as
27 set out in this section and that if the patient does not request such a hearing
28 that further treatment will likely be ordered, but that having been so
29 advised the patient does not desire a hearing. Thereupon, the court may
30 renew its order for treatment and may specify the next period of treatment
31 as provided for in subsection (f). A copy of the court's order shall be given
32 to the patient, the attorney for the patient, the patient's legal guardian, the
33 petitioner or the county or district attorney, as appropriate, and to the head
34 of the treatment facility treating the patient as the court directs.

35 (c) Upon receiving a written request for a hearing, the district court
36 shall set the matter for hearing and notice of such hearing shall be given
37 similarly as provided for in K.S.A. 59-2963, and amendments thereto.
38 Notice shall also be given promptly to the head of the treatment facility
39 treating the patient. The hearing shall be held as soon as reasonably
40 practical, but in no event more than 10 days following the filing of the
41 written request for a hearing. The patient shall remain in treatment during
42 the pendency of any such hearing, unless discharged by the head of the
43 treatment facility pursuant to K.S.A. 59-2973, and amendments thereto.

1 (d) The district court having jurisdiction of any case may, on its own
2 motion or upon written request of any interested party, including the head
3 of the treatment facility where a patient is being treated, hold a hearing to
4 review the patient's status earlier than at the times set out in subsection (b)
5 ~~above~~, if the court determines that a material change of circumstances has
6 occurred necessitating an earlier hearing, however, the patient shall not be
7 entitled to have more than one review hearing within each period of
8 treatment as specified in any order for treatment, order for out-patient
9 treatment or order for continued treatment.

10 (e) The hearing shall be conducted in the same manner as hearings
11 provided for in K.S.A. 59-2965, and amendments thereto, except that the
12 hearing shall be to the court and the patient shall not have the right to
13 demand a jury. At the hearing it shall be the petitioner's or county or
14 district attorney's or treatment facility's burden to show that the patient
15 remains a mentally ill person subject to involuntary commitment for care
16 and treatment under this act.

17 (f) Upon completion of the hearing, if the court finds by clear and
18 convincing evidence that the patient continues to be a mentally ill person
19 subject to involuntary commitment for care and treatment under this act,
20 the court shall order continued treatment for a specified period of time not
21 to exceed ~~three~~ six months for any initial order for continued treatment,
22 nor more than six months in any subsequent order for continued treatment,
23 at an inpatient treatment facility as provided for in K.S.A. 59-2966, and
24 amendments thereto, or at an outpatient treatment facility if the court
25 determines that outpatient treatment is appropriate under K.S.A. 59-2967,
26 and amendments thereto, and a copy of the court's order shall be provided
27 to the head of the treatment facility. If the court finds that it has not been
28 shown by clear and convincing evidence that the patient continues to be a
29 mentally ill person subject to involuntary commitment for care and
30 treatment under this act, it shall release the patient. A copy of the court's
31 order of release shall be provided to the patient, the patient's attorney, the
32 patient's legal guardian or other person known to be interested in the care
33 and welfare of a minor patient, and to the head of the treatment facility ~~at~~
34 ~~which~~ where the patient had been receiving treatment.

35 Sec. 5. K.S.A. 59-2958, 59-2959 and 59-2969 and K.S.A. ~~2022~~ 2023
36 Supp. 59-2967 are hereby repealed.

37 Sec. 6. This act shall take effect and be in force from and after its
38 publication in the statute book.