

HOUSE BILL No. 2584

By Committee on Judiciary

2-7

1 AN ACT concerning crimes, criminal procedure and punishment; relating
2 to competence of defendants to stand trial; repealing K.S.A. 22-3301
3 and 22-3306 and K.S.A. 2013 Supp. 22-3302, 22-3303 and 22-3305.
4

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

6 Section 1. (a) No defendant shall be tried for the crime charged while
7 mentally incompetent to stand trial.

8 (b) A defendant is mentally incompetent to stand trial when such
9 defendant, because of mental illness or defect, does not have:

10 (1) Sufficient present ability to consult with the defendant's lawyer
11 with a reasonable degree of rational understanding and otherwise assist in
12 the defense; and

13 (2) a rational and factual understanding of the proceedings.

14 Sec. 2. As used in sections 1 through 18, and amendments thereto:

15 (a) "Competent" means mentally competent to stand trial.

16 (b) "Evaluator" means a person administering a competency
17 evaluation.

18 (c) "Incompetent" means mentally incompetent to stand trial as
19 provided in subsection (b) of section 1, and amendments thereto.

20 (d) "Residential facility" means a facility where a person receives
21 inpatient treatment or evaluation.

22 (e) "Treatment" has the same meaning as defined in K.S.A. 59-2946,
23 and amendments thereto.

24 Sec. 3. (a) The defendant, the defendant's counsel or the prosecutor
25 may move for a competency evaluation at any time after criminal charges
26 have been brought but prior to pronouncement of sentence whenever any
27 such party has reason to believe such defendant is incompetent. Such
28 motion shall set forth the reasons which form the basis of such belief.
29 Upon a motion for a competency evaluation and for good cause shown, the
30 court shall order a competency evaluation.

31 (b) The court shall, upon its own motion, order a competency
32 evaluation whenever the court has reason to believe such defendant is
33 incompetent. The court shall inform all parties of the reason for its belief,
34 and give each party an opportunity to be heard before ordering such
35 evaluation.

36 (c) Upon an order for a competency evaluation and hearing, the court

1 shall suspend the criminal proceedings and order a competency evaluation.
2 If the defendant is in jeopardy at the time of such order, the court may
3 either order a recess or declare a mistrial.

4 Sec. 4. (a) No evaluator shall be appointed by the court unless the
5 court determines that such evaluator's qualifications include:

6 (1) Sufficient professional education and sufficient clinical training
7 and experience to establish the clinical knowledge required for the specific
8 type of evaluation being conducted; and

9 (2) sufficient forensic knowledge or experience necessary for
10 understanding the relevant legal matter and for satisfying the specific
11 purpose for which the evaluation is being ordered.

12 (b) (1) On and after January 1, 2016, any evaluator appointed by the
13 court shall be credentialed by the institute for Kansas forensic examiners.
14 Any person working as an evaluator prior to January 1, 2016, shall have
15 completed at least 24 hours of continuing education in forensics. Any
16 person seeking initial appointment by the court as an evaluator on or after
17 January 1, 2016, shall have completed at least 24 hours of continuing
18 education in forensics and at least six months of supervised internship
19 prior to performing any evaluation without supervision.

20 (2) On and after January 1, 2017, any evaluator appointed by the
21 court shall submit documentation demonstrating completion of at least
22 three hours of continuing education in forensics in the prior calendar year.

23 Sec. 5. The order for evaluation shall specify the nature of the
24 evaluation to be conducted and the legal criteria of competency to be
25 addressed by the evaluator, as described in section 1, and amendments
26 thereto. Such evaluation shall not include an evaluation of whether the
27 defendant, as a result of mental illness or defect, lacked the mental state
28 required as an element of the crime.

29 Sec. 6. (a) If a defendant is in custody, the evaluation shall be
30 concluded and a report returned to the court within 21 days of the
31 defendant's admission to the state security hospital or residential facility,
32 or, if the court orders the defendant to be evaluated in jail, within 21 days
33 of such order. Such time periods may be extended for good cause shown,
34 but shall not exceed 45 days.

35 (b) Except as provided in subsection (b) of section 7, and
36 amendments thereto, to facilitate the evaluation the court may:

37 (1) Commit a defendant charged with a felony to the state security
38 hospital or any county or private residential facility for evaluation;

39 (2) commit a defendant charged with a misdemeanor to any
40 appropriate state, county or private residential facility for evaluation,
41 except that the court shall not commit such defendant to the state security
42 hospital or any other state residential facility unless, prior to such
43 commitment, the director of a county or private residential facility

1 recommends to the court and to the secretary for children and families that
2 evaluation of such defendant should be performed at a state residential
3 facility; or

4 (3) order the evaluation to be conducted while the defendant is in jail.

5 Sec. 7. (a) If a defendant has been granted pretrial release pursuant to
6 K.S.A. 22-2802, and amendments thereto, the evaluation shall be
7 concluded and a report returned to the court within 30 days of the court's
8 order.

9 (b) Such defendant on pretrial release shall not be involuntarily
10 confined, committed, taken into custody, denied a pretrial release hearing
11 or denied release on an appearance bond solely because a competency
12 evaluation has been ordered, unless confinement is necessary for such
13 evaluation or the court determines that such defendant is unlikely to
14 submit to an outpatient evaluation. Such confinement shall be for the
15 minimum length of time necessary to complete such evaluation.

16 (c) The court may order such defendant, as a condition of pretrial
17 release, to appear at a designated time and place for outpatient evaluation.

18 (d) Subject to the limitations of subsection (b)(1) and (b)(2) of section
19 6, and amendments thereto, the court shall have the authority to
20 involuntarily commit a defendant who refuses to cooperate or to provide
21 sufficient information to permit a determination of competence.

22 (1) Such commitment may continue for such time as is necessary to
23 determine competence. The initial order of commitment shall be for no
24 longer than 14 days, subject to extensions for good cause shown.

25 (2) At the expiration of 45 days, the court shall hold a hearing to
26 determine if there is a need for further commitment.

27 Sec. 8. (a) The written evaluation report shall be provided to the court
28 and to each party. Such report shall:

29 (1) Identify the evaluator's qualifications for conducting the
30 evaluation;

31 (2) identify the specific matters referred for evaluation;

32 (3) describe the procedures, tests and techniques used by the
33 evaluator;

34 (4) state the evaluator's clinical findings and opinions on each matter
35 referred for evaluation and indicate specifically those questions, if any, that
36 could not be answered;

37 (5) identify the sources of information and present the factual basis
38 for the evaluator's clinical findings and opinions; and

39 (6) present the reasoning by which the evaluator utilized the
40 information to reach the clinical findings and opinions.

41 (b) If it is determined that treatment is necessary for the defendant to
42 attain or maintain competence, the report shall address:

43 (1) The conditions causing such incompetence;

1 (2) the treatment required for the defendant to attain or maintain
2 competence; and

3 (3) the likelihood of the defendant's attaining competence under the
4 treatment and the probable duration of such treatment.

5 Sec. 9. (a) Information elicited from the defendant at a competency
6 evaluation shall be considered privileged information and shall only be
7 used in a proceeding to determine the defendant's competence and related
8 treatment issues. No statement made by the defendant in the course of such
9 evaluation shall be admitted in evidence against the defendant in any
10 criminal proceeding.

11 (b) The defendant shall waive such privilege if such defendant uses
12 such information, including, but not limited to, the report or any parts
13 thereof, for any other purpose.

14 Sec. 10. (a) Any party may move to contest the findings of the
15 evaluation report within seven days of receipt of such report. Upon
16 motion, the court shall order a hearing to be held within seven days of the
17 motion contesting such report.

18 (b) Before the competency hearing, upon motion of any party and for
19 good cause shown, the court shall order the defendant to be reevaluated by
20 a different evaluator who shall create a written report as described in
21 section 8, and amendments thereto.

22 (c) If neither party contests, the court shall independently review the
23 report. If the court concurs with the recommendations, the court shall enter
24 an order accepting the report either continuing the defendant's treatment
25 or, if the defendant is determined to be competent, resume the criminal
26 proceedings. If the court does not concur with such report's conclusions,
27 the court shall order a reevaluation of the defendant and shall hold a
28 hearing on the issues addressed in such report.

29 (d) The prosecutor or defense counsel may move for reevaluation of a
30 defendant or for rehearing by the court on the issue of the defendant's
31 continuing incompetence at any time prior to sentencing.

32 Sec. 11. All hearings related to competence, treatment and
33 involuntary confinement shall be tried by the court. If the defendant has
34 been confined for examination or is in custody, such hearings shall be held
35 within seven days of the receipt of such report. If the defendant is on
36 pretrial release, such hearing shall be held within 30 days of receipt of
37 such report.

38 Sec. 12. (a) (1) In all cases the defendant shall have the right to be
39 personally present at the hearing, cross-examine witnesses, call witnesses,
40 have compulsory process for the attendance of witnesses and an
41 opportunity to interview the evaluator before the hearing.

42 (2) Either party may call any person designated by the evaluator as a
43 source of information for preparation of the report as a witness, except the

1 prosecutor, defendant or defense attorney.

2 (3) The evaluator, whether called by the court or any party, shall be a
3 witness subject to examination.

4 (b) The court may inquire of defense counsel about the professional
5 attorney-client relationship and the client's ability to communicate
6 effectively with counsel. Defense counsel shall not be required to divulge
7 the substance of confidential or privileged communications.

8 (c) Each party shall have the right to present evidence at the hearing.
9 At the conclusion of such hearing, the court shall enter a written order
10 setting forth separately and distinctly the findings of the court on the issues
11 of competence, treatment and, if applicable, involuntary confinement, and
12 the facts on which such determinations are based.

13 Sec. 13. (a) If the court does not find by a preponderance of the
14 evidence that the defendant is incompetent, the criminal proceedings shall
15 resume.

16 (b) The judge who conducted the competency hearing:

17 (1) May conduct the preliminary examination if the criminal
18 proceedings were suspended before or during the preliminary examination;
19 or

20 (2) may order the district magistrate judge to conduct the preliminary
21 examination, if a district magistrate judge was conducting the criminal
22 proceedings prior to the competency hearing.

23 (c) Upon notification of the court that a defendant committed for
24 evaluation has been found competent, the court shall order that the
25 defendant be returned not later than five days after receipt of the notice for
26 proceedings under this section. If the defendant is not returned within that
27 time, the county in which the proceedings will be held shall pay the costs
28 of maintaining the defendant at the institution or facility for the period of
29 time the defendant remains at such institution or facility in excess of the
30 five-day period.

31 Sec. 14. (a) If the court finds that the defendant is incompetent or that
32 competence depends on continuation of treatment, the court shall consider
33 issues relating to treatment to effect competence, including, but not limited to,
34 probable duration and the likelihood of restoration to competency in the
35 reasonably foreseeable future.

36 (b) A defendant may be ordered to undergo treatment if the court
37 finds that the defendant is in need of such services. When the defendant is
38 in custody, the court may order:

39 (1) Treatment services to be administered at the residential facility;

40 (2) the defendant's transfer to another residential facility for
41 treatment; or

42 (3) the defendant to comply with outpatient treatment services.

43 (c) At the conclusion of the hearing, the court shall enter its written

1 order for treatment to effect competence. The order shall contain:

2 (1) Written findings of fact setting forth the findings of the court on
3 the issues of competence, treatment and, if applicable, involuntary
4 confinement;

5 (2) copies of supporting evaluative information sufficient for a
6 treatment provider to ascertain the charge against the defendant and the
7 nature of the conditions causing the incompetence; and

8 (3) the time at which reports will be required from the treatment
9 providers.

10 Sec. 15. (a) A defendant shall not be considered incompetent solely
11 because such defendant's competence is dependent upon continuation of
12 treatment, including, but not limited to, medication.

13 (b) A defendant shall not be prohibited from standing trial or entering
14 a plea solely because such defendant is undergoing such treatment.

15 Sec. 16. (a) Within 21 days of the court's order committing a
16 defendant for treatment, or ordering treatment on an outpatient basis, the
17 evaluator shall develop and file with the court an individualized plan of
18 treatment including the supporting data and facts used in the determination
19 of such treatment plan.

20 (b) A person determined to be incompetent and committed for
21 treatment or ordered to appear for outpatient treatment shall have no right
22 to refuse ordinary and reasonable treatment designed to effect competence.
23 At the time such treatment begins, the facility or person providing such
24 treatment shall notify the secretary of corrections for the purpose of
25 providing victim notification.

26 (c) The residential facility in which a defendant is committed shall
27 notify the secretary of corrections for the purpose of providing victim
28 notification.

29 Sec. 17. (a) A defendant's continuing incompetence shall be
30 periodically redetermined by the court. The treatment provider shall
31 periodically file a continuing incompetency report on the defendant's
32 current status with the court, provide copies of such report to the
33 prosecutor and defense counsel, and provide notice of such report to the
34 defendant.

35 (b) Such report shall be filed at intervals not to exceed 90 days and at
36 any time the treatment provider believes:

37 (1) Such defendant has attained competence; or

38 (2) that there is not a substantial probability that the defendant will
39 attain competence within the foreseeable future.

40 (c) Such report shall contain:

41 (1) A reevaluation of issues contained in the initial competency
42 report;

43 (2) a description of the treatment administered; and

1 (3) an assessment of the defendant's continued progress toward
2 attaining competency within the reasonably foreseeable future, if such
3 report concludes that the defendant remains incompetent to stand trial.

4 Sec. 18. (a) If the continuing incompetency report concludes that
5 there is a substantial probability of the defendant attaining competency in
6 the foreseeable future, the court shall order the defendant to remain in an
7 appropriate residential facility or outpatient treatment program until the
8 defendant attains competency or for a period of six months from the date
9 of the original commitment, whichever occurs first.

10 (b) If the continuing incompetency report concludes that the
11 defendant has attained competence, the court in which the criminal case is
12 pending shall conduct a hearing to determine the defendant's competence
13 within seven days of receipt of such report. If the court finds that such
14 defendant is no longer incompetent, the criminal proceedings shall resume.
15 If such criminal proceedings resume, the court shall give notice to the
16 secretary of corrections for the purpose of providing victim notification.

17 (c) If such defendant has not obtained competency within six months
18 of the date of the original commitment or the continuing incompetency
19 report concludes that there is not a substantial probability that the
20 defendant will attain competency within the foreseeable future, the court
21 shall order the secretary for children and families to commence
22 involuntary commitment proceedings pursuant to article 29 of chapter 59
23 of the Kansas Statutes Annotated, and amendments thereto. The secretary
24 shall promptly notify the court, the county or district attorney in which the
25 criminal proceedings are pending and the secretary of corrections for the
26 purpose of providing victim notification, of the result of the involuntary
27 commitment proceeding.

28 (1) When a defendant is charged with any off-grid felony, any
29 nondrug severity level 1, 2 or 3 felony or a violation of subsection (b) of
30 K.S.A. 21-5505, subsection (b) of K.S.A. 21-5506, subsection (b) of
31 K.S.A. 21-5508, subsection (b) of K.S.A. 21-5604 or subsection (b) of
32 K.S.A. 21-5812, and amendments thereto, and involuntary commitment
33 proceedings are commenced, for such involuntary commitment proceeding
34 the term "mentally ill person subject to involuntary commitment for care
35 and treatment" means a mentally ill person, as defined in subsection (e) of
36 K.S.A. 59-2946, and amendments thereto, who is likely to cause harm to
37 self or others, as defined in subsection (f)(3) of K.S.A. 59-2946, and
38 amendments thereto. The other provisions of subsection (f) of K.S.A. 59-
39 2946, and amendments thereto, shall not apply.

40 (2) Whenever involuntary commitment proceedings have been
41 commenced by the secretary for children and families as required by
42 K.S.A. 22-3303, and amendments thereto, and the defendant is not
43 committed to a treatment facility as a patient, the defendant shall remain in

1 the institution where committed pursuant to K.S.A. 22-3303, and
2 amendments thereto. The secretary for children and families shall
3 promptly notify the court, the county or district attorney of the county in
4 which the criminal proceedings are pending and the secretary of
5 corrections for the purpose of providing victim notification, of the result of
6 the involuntary commitment proceeding.

7 (3) If the defendant is involuntarily committed to a residential facility
8 as a patient but thereafter is to be discharged pursuant to the care and
9 treatment act for mentally ill persons, the defendant shall remain in the
10 residential facility where committed and the head of the residential facility
11 shall promptly notify the court, the county or district attorney of the county
12 in which the criminal proceedings are pending and the secretary of
13 corrections for the purpose of providing victim notification, that the
14 defendant is to be discharged.

15 (4) Notification to the court shall include an opinion from the head of
16 the treatment facility as to whether or not the defendant is now competent
17 to stand trial. Upon request of the county or district attorney and for good
18 cause shown, the court shall set a hearing on the issue of whether or not
19 the defendant has been restored to competency and notify the secretary of
20 corrections of the hearing date for the purpose of victim notification. If no
21 such request is made within 14 days after receipt of notice, the court shall
22 order the defendant to be discharged from commitment and shall dismiss
23 without prejudice the charges against the defendant. The period of
24 limitation for the prosecution for the crime charged shall not continue to
25 run until the defendant has been determined to have attained competency.
26 The court shall notify the secretary of corrections of the discharge order
27 for the purpose of providing victim notification.

28 (d) A defendant committed to a residential facility for evaluation or
29 treatment to effect competency who is thereafter sentenced for the crime
30 charged at the time of such commitment may be credited with the time
31 such defendant spent in a residential facility.

32 Sec. 19. Sections 1 through 18, and amendments thereto, shall be part
33 of and supplemental to the Kansas code of criminal procedure.

34 Sec. 20. K.S.A. 22-3301 and 22-3306 and K.S.A. 2013 Supp. 22-
35 3302, 22-3303 and 22-3305 are hereby repealed.

36 Sec. 21. This act shall take effect and be in force from and after its
37 publication in the statute book.