

HOUSE BILL No. 2549

AN ACT concerning mental health services; determinations of competency; commitment for treatment; amending K.S.A. 2017 Supp. 22-3302 and 22-3303 and repealing the existing sections.

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

Section 1. K.S.A. 2017 Supp. 22-3302 is hereby amended to read as follows: 22-3302. (1) At any time after the defendant has been charged with a crime and before pronouncement of sentence, the defendant, the defendant's counsel or the prosecuting attorney may request a determination of the defendant's competency to stand trial. If, upon the request of either party or upon the judge's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the defendant is incompetent to stand trial the proceedings shall be suspended and a hearing conducted to determine the competency of the defendant.

(2) If the defendant is charged with a felony, the hearing to determine the competency of the defendant shall be conducted by a district judge.

(3) (A) The court shall determine the issue of competency and may impanel a jury of six persons to assist in making the determination. The court may order a psychiatric or psychological examination of the defendant. To facilitate the examination, the court may: (a) ~~If the defendant is charged with a felony,~~ Commit the defendant to the state security hospital or any *appropriate state, county* ~~or, private institution or facility~~ for examination and report to the court; ~~or, if the defendant is charged with a misdemeanor, commit the defendant to any appropriate state, county or private institution for examination and report to the court,~~ except that the court shall not commit the defendant to the state security hospital or any other state institution unless, prior to such commitment, the director of a local county or private institution recommends to the court and to the secretary ~~of social and rehabilitation~~ *for aging and disability* services that examination of the defendant should be performed at a state institution; (b) designate any appropriate psychiatric or psychological clinic, mental health center or other psychiatric or psychological facility to conduct the examination while the defendant is in jail or on pretrial release; or (c) appoint two qualified licensed physicians or licensed psychologists, or one of each, to examine the defendant and report to the court.

(B) If the court commits the defendant to an institution *or facility* for the examination, the commitment shall be ~~for not more than a period~~ *not to exceed* 60 days or until the examination is completed, whichever is the shorter period of time. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.

(C) Upon notification of the court that a defendant committed for psychiatric or psychological examination under this subsection has been found competent to stand trial, the court shall order that the defendant be returned ~~not~~ *no* later than seven days after receipt of the notice for proceedings under this section. If the defendant is not returned within that time, the county in which the proceedings will be held shall pay the costs of maintaining the defendant at the institution or facility for the period of time the defendant remains at the institution or facility in excess of the seven-day period.

(4) If the defendant is found to be competent, the proceedings which have been suspended shall be resumed. If the proceedings were suspended before or during the preliminary examination, the judge who conducted the competency hearing may conduct a preliminary examination or, if a district magistrate judge was conducting the proceedings prior to the competency hearing, the judge who conducted the competency hearing may order the preliminary examination to be heard by a district magistrate judge.

(5) If the defendant is found to be incompetent to stand trial, the court shall proceed in accordance with K.S.A. 22-3303, and amendments thereto.

(6) If proceedings are suspended and a hearing to determine the defendant's competency is ordered after the defendant is in jeopardy, the court may either order a recess or declare a mistrial.

(7) The defendant shall be present personally at all proceedings under this section.

Sec. 2. K.S.A. 2017 Supp. 22-3303 is hereby amended to read as follows: 22-3303. (1) A defendant who is charged with a ~~felony crime~~ and is found to be incompetent to stand trial shall be committed for evaluation and treatment to ~~the state security hospital or~~ any appropriate *state, county or, private institution or facility*. ~~A defendant who is charged with a misdemeanor and is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state, county or private institution.~~ At the time of such commitment the institution of commitment shall notify the county or district attorney of the county in which the criminal proceedings are pending for the purpose of providing victim notification. Any such commitment shall be for a period ~~of~~ not to exceed 90 days. Within 90 days after the defendant's commitment to such institution, the chief medical officer of such institution shall certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate ~~state, county or,~~ *private institution or facility* until the defendant attains competency to stand trial or for a period of six months from the date of the original commitment, whichever occurs first. If such probability does not exist, the court shall order the secretary for aging and disability services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. When a defendant is charged with any off-grid felony, any non-drug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or ~~subsection (b) of K.S.A. 2017 Supp. 21-5505 (b), subsection (b) of 21-5506(b), subsection (b) of 21-5508(b), subsection (b) of 21-5604(b) or subsection (b) of 21-5812(b),~~ and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in ~~subsection (e) of K.S.A. 59-2946(e),~~ and amendments thereto, who is likely to cause harm to self and others, as defined in ~~subsection (f)(3) of K.S.A. 59-2946(f)(3),~~ and amendments thereto. The other provisions of ~~subsection (f) of K.S.A. 59-2946(f),~~ and amendments thereto, shall not apply.

(2) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the secretary for aging and disability services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, prior to their repeal, or ~~subsection (b) of K.S.A. 2017 Supp. 21-5505(b), subsection (b) of 21-5506(b), subsection (b) of 21-5508(b), subsection (b) of 21-5604(b) or subsection (b) of 21-5812(b),~~ and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in ~~subsection (e) of K.S.A. 59-2946(e),~~ and amendments thereto, who is likely to cause harm to self and others, as defined in ~~subsection (f)(3) of K.S.A. 59-2946(f)(3),~~ and amendments thereto. The other provisions of ~~subsection (f) of K.S.A. 59-2946(f),~~ and amendments thereto, shall not apply.

(3) When reasonable grounds exist to believe that a defendant who has been adjudged incompetent to stand trial is competent, the court in which the criminal case is pending shall conduct a hearing in accordance with K.S.A. 22-3302, and amendments thereto, to determine the person's present mental condition. Such court shall give reasonable notice of such hearings to the prosecuting attorney, the defendant and the defendant's attorney of record, if any. The prosecuting attorney shall provide victim notification. If the court, following such hearing, finds the defendant to be competent, the proceedings pending against the defendant shall be resumed.

(4) A defendant committed to a public institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all or any part of the time

during which the defendant was committed and confined in such public institution.

Sec. 3. K.S.A. 2017 Supp. 22-3302 and 22-3303 are hereby repealed.

Sec. 4. 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.*