

SENATE BILL No. 371

By Committee on Judiciary

2-5

1 AN ACT concerning the Kansas sexually violent predator act; relating to
2 custody and detention before determination that a person is subject to
3 civil commitment; amending K.S.A. 2017 Supp. 59-29a05 and
4 repealing the existing section.

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

7 Section 1. K.S.A. 2017 Supp. 59-29a05 is hereby amended to read as
8 follows: 59-29a05. (a) Upon filing of a petition under K.S.A. 59-29a04,
9 and amendments thereto, the judge shall determine whether probable cause
10 exists to believe that the person named in the petition is a sexually violent
11 predator. If such determination is made, the judge shall:

12 (1) Direct that person be taken into custody and detained in the
13 county jail until ~~such time as a determination is made that the person is a~~
14 ~~sexually violent predator subject to commitment under the Kansas sexually~~
15 ~~violent predator act~~ *the conclusion of the probable cause hearing as*
16 *provided in subsection (b); and*

17 (2) file a protective order permitting disclosures of protected health
18 information to the parties, their counsel, evaluators, experts and others
19 necessary to the litigation during the course of the proceedings subject to
20 the Kansas sexually violent predator act.

21 (b) Within 72 hours after a person is taken into custody pursuant to
22 subsection (a), or as soon as reasonably practicable or agreed upon by the
23 parties, such person shall be provided with notice of, and an opportunity to
24 appear in person at, a hearing to contest probable cause as to whether the
25 detained person is a sexually violent predator. At this hearing the court
26 shall:

27 (1) Verify the detainer's identity; and
28 (2) determine whether probable cause exists to believe that the person
29 is a sexually violent predator. The state may rely upon the petition and
30 supplement the petition with additional documentary evidence or live
31 testimony.

32 (c) At the probable cause hearing as provided in subsection (b), the
33 detained person shall have the following rights in addition to the rights
34 previously specified:

35 (1) To be represented by counsel;
36 (2) to present evidence on such person's behalf;

1 (3) to cross-examine witnesses who testify against such person; and

2 (4) to view and copy all petitions and reports in the court file.

3 (d) If the probable cause determination is made, the court shall:

4 (1) *Direct that the person be taken into custody by the secretary for*
5 *aging and disability services and detained in a secure facility operated by*
6 *the Kansas department for aging and disability services until such time as*
7 *a determination is made that the person is a sexually violent predator*
8 *subject to commitment under the Kansas sexually violent predator act;*
9 *and*

10 (2) order that the person be transferred to an appropriate secure
11 facility, including, but not limited to, ~~a county jail~~ *an appropriate facility*
12 *operated by the Kansas department for aging and disability services*, for
13 an evaluation as to whether the person is a sexually violent predator. The
14 evaluation ordered by the court shall be conducted by a person deemed to
15 be professionally qualified to conduct such an examination.

16 (e) The person conducting the evaluation ordered by the court
17 pursuant to this section shall notify the detained person of the following:

18 (1) The nature and purpose of the evaluation; and

19 (2) that the evaluation will not be confidential and that any statements
20 made by the detained person and any conclusions drawn by the evaluator,
21 will be disclosed to the court, the detained person's attorney, the prosecutor
22 and the trier of fact at any proceeding conducted under the Kansas
23 sexually violent predator act.

24 Sec. 2. K.S.A. 2017 Supp. 59-29a05 is hereby repealed.

25 Sec. 3. This act shall take effect and be in force from and after July 1,
26 2020, and its publication in the statute book.