

HOUSE BILL No. 2527

By Committee on Judiciary

1-21

1 AN ACT concerning court services officers; relating to persons found not
2 guilty by reason of mental disease or defect; prohibiting supervision by
3 court services officers; relating to children in need of care; removing
4 authority for such children to be delivered to court services officers;
5 amending K.S.A. 38-2232 and K.S.A. 2021 Supp. 22-3428 and
6 repealing the existing sections.

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

9 Section 1. K.S.A. 2021 Supp. 22-3428 is hereby amended to read as
10 follows: 22-3428. ~~(1)~~ (a) (1) When a defendant is acquitted and the jury
11 answers in the affirmative to the special question asked pursuant to K.S.A.
12 22-3221, and amendments thereto, the defendant shall be committed to the
13 state security hospital for safekeeping and treatment and the county or
14 district attorney shall provide victim notification. A finding of not guilty
15 and the jury answering in the affirmative to the special question asked
16 pursuant to K.S.A. 22-3221, and amendments thereto, shall be prima facie
17 evidence that the acquitted defendant is presently likely to cause harm to
18 self or others.

19 ~~(b)~~(2) Within 90 days of the defendant's admission, the chief medical
20 officer of the state security hospital shall send to the court a written
21 evaluation report. Upon receipt of the report, the court shall set a hearing
22 to determine whether or not the defendant is currently a mentally ill
23 person. The hearing shall be held within 30 days after the receipt by the
24 court of the chief medical officer's report.

25 ~~(e)~~(3) The court shall give notice of the hearing to the chief medical
26 officer of the state security hospital, the district or county attorney, the
27 defendant and the defendant's attorney. The county or district attorney
28 shall provide victim notification. The court shall inform the defendant that
29 such defendant is entitled to counsel and that counsel will be appointed to
30 represent the defendant if the defendant is not financially able to employ
31 an attorney as provided in K.S.A. 22-4503 et seq., and amendments
32 thereto. The defendant shall remain at the state security hospital pending
33 the hearing.

34 ~~(d)~~(4) At the hearing, the defendant shall have the right to present
35 evidence and cross-examine witnesses. At the conclusion of the hearing, if
36 the court finds by clear and convincing evidence that the defendant is not

1 currently a mentally ill person, the court shall dismiss the criminal
2 proceeding and discharge the defendant, otherwise the court may commit
3 the defendant to the state security hospital for treatment or may place the
4 defendant on conditional release pursuant to subsection ~~(4)~~ (d). The county
5 or district attorney shall provide victim notification regarding the outcome
6 of the hearing.

7 ~~(2)~~(b) Subject to the provisions of subsection ~~(3)~~ (c):

8 ~~(a)~~(1) Whenever it appears to the chief medical officer of the state
9 security hospital that a person committed under subsection ~~(1)~~(d) (a)(4) is
10 not likely to cause harm to other persons in a less restrictive hospital
11 environment, the officer may transfer the person to any state hospital,
12 subject to the provisions of subsection ~~(3)~~ (c). At any time subsequent
13 thereto during which such person is still committed to a state hospital, if
14 the chief medical officer of that hospital finds that the person may be
15 likely to cause harm or has caused harm, to others, such officer may
16 transfer the person back to the state security hospital.

17 ~~(b)~~(2) Any person committed under subsection ~~(1)~~(d) (a)(4) may be
18 granted conditional release or discharge as an involuntary patient.

19 ~~(3)~~(c) (1) Before transfer of a person from the state security hospital
20 pursuant to subsection ~~(2)~~(a) (b)(1) or conditional release or discharge of a
21 person pursuant to subsection ~~(2)~~(b) (b)(2), the chief medical officer of the
22 state security hospital or the state hospital where the patient is under
23 commitment shall give notice to the district court of the county from
24 which the person was committed that transfer of the patient is proposed or
25 that the patient is ready for proposed conditional release or discharge. Such
26 notice shall include, but not be limited to:

27 ~~(a)~~(A) Identification of the patient;

28 ~~(b)~~(B) the course of treatment;

29 ~~(c)~~(C) a current assessment of the defendant's mental illness;

30 ~~(d)~~(D) recommendations for future treatment, if any; and

31 ~~(e)~~(E) recommendations regarding conditional release or discharge, if
32 any.

33 (2) Upon receiving notice, the district court shall order that a hearing
34 be held on the proposed transfer, conditional release or discharge. The
35 court shall give notice of the hearing to the state hospital or state security
36 hospital where the patient is under commitment, to the district or county
37 attorney of the county from which the person was originally ordered
38 committed. The county or district attorney shall provide victim notification
39 regarding the hearing.

40 (3) The court shall order the involuntary patient to undergo a mental
41 evaluation by a person designated by the court. A copy of all orders of the
42 court shall be sent to the involuntary patient and the patient's attorney. The
43 report of the court ordered mental evaluation shall be given to the district

1 or county attorney, the involuntary patient and the patient's attorney at
2 least seven days prior to the hearing.

3 (4) The hearing shall be held within 30 days after the receipt by the
4 court of the chief medical officer's notice. The involuntary patient shall
5 remain in the state hospital or state security hospital where the patient is
6 under commitment until the hearing on the proposed transfer, conditional
7 release or discharge is to be held. At the hearing, the court shall receive all
8 relevant evidence, including the written findings and recommendations of
9 the chief medical officer of the state security hospital or the state hospital
10 where the patient is under commitment, and shall determine whether the
11 patient shall be transferred to a less restrictive hospital environment or
12 whether the patient shall be conditionally released or discharged.

13 (5) The patient shall have the right to present evidence at such
14 hearing and to cross-examine any witnesses called by the district or county
15 attorney. At the conclusion of the hearing, if the court finds by clear and
16 convincing evidence that the patient will not be likely to cause harm to self
17 or others if transferred to a less restrictive hospital environment, the court
18 shall order the patient transferred. If the court finds by clear and
19 convincing evidence that the patient is not currently a mentally ill person,
20 the court shall order the patient discharged or conditionally released;
21 otherwise, the court shall order the patient to remain in the state security
22 hospital or state hospital where the patient is under commitment.

23 (6) If the court orders the conditional release of the patient in
24 accordance with subsection ~~(4)~~ (d), the court may order as an additional
25 condition to the release that the patient continue to take prescribed
26 medication and report as directed to a person licensed to practice medicine
27 and surgery to determine whether or not the patient is taking the
28 medication or that the patient continue to receive periodic psychiatric or
29 psychological treatment. The county or district attorney shall notify any
30 victims of the outcome of the hearing.

31 ~~(4)~~(d) In order to ensure the safety and welfare of a patient who is to
32 be conditionally released and the citizenry of the state, the court may allow
33 the patient to remain in custody at a facility under the supervision of the
34 secretary for aging and disability services for a period of time not to
35 exceed 45 days in order to permit sufficient time for the secretary to
36 prepare recommendations to the court for a suitable reentry program for
37 the patient and allow adequate time for the county or district attorney to
38 provide victim notification. The reentry program shall be specifically
39 designed to facilitate the return of the patient to the community as a
40 functioning, self-supporting citizen, and may include appropriate
41 supportive provisions for assistance in establishing residency, securing
42 gainful employment, undergoing needed vocational rehabilitation,
43 receiving marital and family counseling, and such other outpatient services

1 that appear beneficial. If a patient who is to be conditionally released will
2 be residing in a county other than the county where the district court that
3 ordered the conditional release is located, the court shall transfer venue of
4 the case to the district court of the other county and send a copy of all of
5 the court's records of the proceedings to the other court. In all cases of
6 conditional release the court shall:

7 ~~(a)~~(1) Order that the patient be placed under the temporary
8 supervision of district court probation and parole services, community
9 treatment facility or any appropriate private agency, *except that the patient*
10 *shall not be placed under the supervision of a court services officer;* and

11 ~~(b)~~(2) require as a condition precedent to the release that the patient
12 agree in writing to waive extradition in the event a warrant is issued
13 pursuant to K.S.A. 22-3428b, and amendments thereto.

14 ~~(5)~~(e) (1) At any time during the conditional release period, a
15 conditionally released patient, through the patient's attorney, or the county
16 or district attorney of the county in which the district court having venue is
17 located may file a motion for modification of the conditions of release, and
18 the court shall hold an evidentiary hearing on the motion within 14 days of
19 its filing. The court shall give notice of the time for the hearing to the
20 patient and the county or district attorney. If the court finds from the
21 evidence at the hearing that the conditional provisions of release should be
22 modified or vacated, it shall so order. If at any time during the transitional
23 period the designated medical officer or supervisory personnel or the
24 treatment facility informs the court that the patient is not satisfactorily
25 complying with the provisions of the conditional release, the court, after a
26 hearing for which notice has been given to the county or district attorney
27 and the patient, may make orders:

28 ~~(a)~~(A) For additional conditions of release designed to effect the ends
29 of the reentry program;

30 ~~(b)~~(B) requiring the county or district attorney to file a petition to
31 determine whether the patient is a mentally ill person as provided in
32 K.S.A. 59-2957, and amendments thereto; or

33 ~~(e)~~(C) requiring that the patient be committed to the state security
34 hospital or any state hospital.

35 (2) In cases where a petition is ordered to be filed, the court shall
36 proceed to hear and determine the petition pursuant to the care and
37 treatment act for mentally ill persons and that act shall apply to all
38 subsequent proceedings. If a patient is committed to any state hospital
39 pursuant to this act the county or district attorney shall provide victim
40 notification. The costs of all proceedings, the mental evaluation and the
41 reentry program authorized by this section shall be paid by the county
42 from which the person was committed.

43 ~~(6)~~(f) In any case in which the defense that the defendant lacked the

1 required mental state pursuant to K.S.A. 22-3220, and amendments
 2 thereto, is relied on, the court shall instruct the jury on the substance of
 3 this section.

4 ~~(7)~~(g) As used in this section and K.S.A. 22-3428a, and amendments
 5 thereto:

6 ~~(a)~~(1) "Likely to cause harm to self or others" means that the person
 7 is likely, in the reasonably foreseeable future, to cause substantial physical
 8 injury or physical abuse to self or others or substantial damage to another's
 9 property, or evidenced by behavior causing, attempting or threatening such
 10 injury, abuse or neglect.

11 ~~(b)~~(2) "Mentally ill person" means any person who:

12 (A) Is suffering from a severe mental disorder to the extent that such
 13 person is in need of treatment; and

14 (B) is likely to cause harm to self or others.

15 ~~(c)~~(3) "Treatment facility" means any mental health center or clinic,
 16 psychiatric unit of a medical care facility, psychologist, physician or other
 17 institution or individual authorized or licensed by law to provide either
 18 inpatient or outpatient treatment to any patient.

19 Sec. 2. K.S.A. 38-2232 is hereby amended to read as follows: 38-
 20 2232. (a) (1) To the extent possible, when any law enforcement officer
 21 takes into custody a child under the age of 18 years without a court order,
 22 the child shall promptly be delivered to the custody of the child's parent or
 23 other custodian unless there are reasonable grounds to believe that such
 24 action would not be in the best interests of the child.

25 (2) Except as provided in subsection (b), if the child is not delivered
 26 to the custody of the child's parent or other custodian, the child shall
 27 promptly be delivered to a:

28 (A) (i) Shelter facility designated by the court;

29 (ii) ~~court services officer;~~

30 ~~(iii)~~ juvenile intake and assessment worker;

31 ~~(iv)~~(iii) licensed attendant care center;

32 ~~(v)~~(iv) juvenile crisis intervention center after written authorization
 33 by a community mental health center; or

34 ~~(vi)~~(v) other person;

35 (B) if the child is 15 years of age or younger, to a facility or person
 36 designated by the secretary; or

37 (C) if the child is 16 or 17 years of age and the child has no
 38 identifiable parental or family resources or shows signs of physical,
 39 mental, emotional or sexual abuse, to a facility or person designated by the
 40 secretary.

41 (3) If, after delivery of the child to a shelter facility, the person in
 42 charge of the shelter facility at that time and the law enforcement officer
 43 determine that the child will not remain in the shelter facility and if the

1 child is presently alleged, but not yet adjudicated, to be a child in need of
2 care solely pursuant to K.S.A. 38-2202(d)(9) or (d)(10), and amendments
3 thereto, the law enforcement officer shall deliver the child to a secure
4 facility, designated by the court, where the child shall be detained for not
5 more than 24 hours, excluding Saturdays, Sundays, legal holidays, and
6 days on which the office of the clerk of the court is not accessible.

7 (4) No child taken into custody pursuant to this code shall be placed
8 in a secure facility, except as authorized by this section and by K.S.A. 38-
9 2242, 38-2243 and 38-2260, and amendments thereto.

10 (5) It shall be the duty of the law enforcement officer to furnish to the
11 county or district attorney, without unnecessary delay, all the information
12 in the possession of the officer pertaining to the child, the child's parents or
13 other persons interested in or likely to be interested in the child and all
14 other facts and circumstances which caused the child to be taken into
15 custody.

16 (b) (1) When any law enforcement officer takes into custody any
17 child as provided in K.S.A. 38-2231(b)(2), and amendments thereto,
18 proceedings shall be initiated in accordance with the provisions of the
19 interstate compact on juveniles, K.S.A. 38-1001 et seq., and amendments
20 thereto, or K.S.A. 38-1008, and amendments thereto, when effective. Any
21 child taken into custody pursuant to the interstate compact on juveniles
22 may be detained in a juvenile detention facility or other secure facility.

23 (2) When any law enforcement officer takes into custody any child as
24 provided in K.S.A. 38-2231(b)(3), and amendments thereto, the law
25 enforcement officer shall place the child in protective custody and may
26 deliver the child to a staff secure facility. The law enforcement officer shall
27 contact the department for children and families to begin an assessment to
28 determine safety, placement and treatment needs for the child. Such child
29 shall not be placed in a secure facility, except as authorized by this section
30 and by K.S.A. 38-2242, 38-2243 and 38-2260, and amendments thereto.

31 (3) When any law enforcement officer takes into custody any child as
32 provided in K.S.A. 38-2231(b)(4), and amendments thereto, the law
33 enforcement officer shall place the child in protective custody and may
34 deliver the child to a juvenile crisis intervention center after written
35 authorization by a community mental health center. Such child shall not be
36 placed in a juvenile detention facility or other secure facility.

37 (c) Whenever a child under the age of 18 years is taken into custody
38 by a law enforcement officer without a court order and is thereafter placed
39 as authorized by subsection (a), the facility or person shall, upon written
40 application of the law enforcement officer, have physical custody and
41 provide care and supervision for the child. The application shall state:

42 (1) The name and address of the child, if known;

43 (2) the names and addresses of the child's parents or nearest relatives

1 and persons with whom the child has been residing, if known; and

2 (3) the officer's belief that the child is a child in need of care and that
3 there are reasonable grounds to believe that the circumstances or condition
4 of the child is such that the child would be harmed unless placed in the
5 immediate custody of the shelter facility or other person.

6 (d) A copy of the application shall be furnished by the facility or
7 person receiving the child to the county or district attorney without
8 unnecessary delay.

9 (e) The shelter facility or other person designated by the court who
10 has custody of the child pursuant to this section shall discharge the child
11 not later than 72 hours following admission, excluding Saturdays,
12 Sundays, legal holidays, and days on which the office of the clerk of the
13 court is not accessible, unless a court has entered an order pertaining to
14 temporary custody or release.

15 (f) In absence of a court order to the contrary, the county or district
16 attorney or the placing law enforcement agency shall have the authority to
17 direct the release of the child at any time.

18 (g) When any law enforcement officer takes into custody any child as
19 provided in K.S.A. 38-2231(d), and amendments thereto, the child shall
20 promptly be delivered to the school in which the child is enrolled, any
21 location designated by the school in which the child is enrolled or the
22 child's parent or other custodian.

23 Sec. 3. K.S.A. 38-2232 and K.S.A. 2021 Supp. 22-3428 are hereby
24 repealed.

25 Sec. 4. This act shall take effect and be in force from and after its
26 publication in the statute book.