

**SENATE BILL No. 344**

By Committee on Judiciary

1-13

1 AN ACT concerning crimes, punishment and criminal procedure; relating  
2 to principles of criminal liability; providing an exception to criminal  
3 liability when a defendant has a mental disease or defect so as not to  
4 know the nature of the act or that such act was wrong; amending  
5 K.S.A. 22-3219, 22-3221 and 22-3222 and K.S.A. 2021 Supp. 12-736,  
6 21-5209, 22-3428 and 22-3428a and 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. 12-736 is hereby amended to read as  
10 follows: 12-736. (a) It is hereby declared to be the policy of the state of  
11 Kansas that persons with a disability shall not be excluded from the  
12 benefits of single family residential surroundings by any municipal zoning  
13 ordinance, resolution or regulation.

14 (b) For the purpose of this act:

15 (1) "Group home" means any dwelling occupied by not more than 10  
16 persons, including eight or fewer persons with a disability who need not be  
17 related by blood or marriage and not to exceed two staff residents who  
18 need not be related by blood or marriage to each other or to the residents  
19 of the home, which dwelling is licensed by a regulatory agency of this  
20 state;

21 (2) "municipality" means any township, city or county located in  
22 Kansas;

23 (3) "disability" means, with respect to a person:

24 (A) A physical or mental impairment that substantially limits one or  
25 more of such person's major life activities;

26 (B) a record of having such an impairment; or

27 (C) being regarded as having such an impairment. Such term does not  
28 include current, illegal use of or addiction to a controlled substance, as  
29 defined in section 102 of the controlled substance act, 21 U.S.C. § 802;  
30 *and*

31 (4) "licensed provider" means a person or agency who provides  
32 mental health services and is licensed by:

33 (A) The Kansas department for aging and disability services pursuant  
34 to K.S.A. 39-2001 *et seq.* or 65-425 *et seq.* ~~or K.S.A. 39-2001 *et seq.*, and~~  
35 ~~amendments thereto;~~ ~~or~~

36 (B) the behavioral sciences regulatory board pursuant to K.S.A. 74-

1 5301 et seq. or 75-5346 et seq. ~~or 74-5301 et seq.~~, and amendments  
2 thereto; or

3 (C) the state board of healing arts pursuant to K.S.A. 65-2801 et seq.,  
4 and amendments thereto.

5 (c) (1) No mentally ill person shall be eligible for placement in a  
6 group home unless such person has been evaluated by a licensed provider  
7 and such provider determines that the mentally ill person is not dangerous  
8 to others and is suitable for group-home placement. A group home shall  
9 not be a licensed provider for the purposes of evaluating or approving for  
10 placement a mentally ill person in a group home.

11 (2) No person shall be eligible for placement in a group home if such  
12 person is:

13 (A) Assigned to a community corrections program or a diversion  
14 program;

15 (B) on parole from a correctional institution or on probation for a  
16 felony offense; or

17 (C) in a state mental institution following a finding of mental disease  
18 or defect excluding criminal responsibility, pursuant to K.S.A. ~~22-3220~~  
19 ~~and 22-3221~~, and amendments thereto, *and K.S.A. 2021 Supp. 21-5209,*  
20 *and amendments thereto.*

21 (d) No person shall be placed in a group home under this act unless  
22 such dwelling is licensed as a group home by the Kansas department for  
23 aging and disability services or the department of health and environment.

24 (e) No municipality shall prohibit the location of a group home in any  
25 zone or area where single family dwellings are permitted. Any zoning  
26 ordinance, resolution or regulation that prohibits the location of a group  
27 home in such zone or area or that subjects group homes to regulations not  
28 applicable to other single family dwellings in the same zone or area is  
29 invalid. Notwithstanding the provisions of this act, group homes shall be  
30 subject to all other regulations applicable to other property and buildings  
31 located in the zone or area that are imposed by any municipality through  
32 zoning ordinance, resolution or regulation, its building regulatory codes,  
33 subdivision regulations or other nondiscriminatory regulations.

34 (f) No person or entity shall contract or enter into a contract,  
35 restrictive covenant, equitable servitude or such similar restriction that  
36 would restrict group homes or their location in a manner inconsistent with  
37 the provisions of subsection (e).

38 Sec. 2. K.S.A. 2021 Supp. 21-5209 is hereby amended to read as  
39 follows: 21-5209. It shall be a defense to a prosecution under any statute  
40 that:

41 (a) The defendant, as a result of mental disease or defect, lacked the  
42 culpable mental state required as an element of the crime charged. ~~Mental~~  
43 ~~disease or defect is not otherwise a defense; or~~

1       (b) *at the time of committing the alleged criminal act, the defendant*  
2 *was laboring under such a mental disease or defect as not to know:*

3       (1) *The nature and quality of such act; or*

4       (2) *that such act was wrong.*

5       Sec. 3. K.S.A. 22-3219 is hereby amended to read as follows: 22-  
6 3219. ~~(1)(a)~~ Evidence of mental disease or defect excluding criminal  
7 responsibility is not admissible upon a trial unless the defendant serves  
8 upon the prosecuting attorney and files with the court a written notice of  
9 such defendant's intention to assert ~~the defense that the defendant, as a~~  
10 ~~result of mental disease or defect lacked the mental state required as an~~  
11 ~~element of the offense charged~~ *a defense described in K.S.A. 2021 Supp.*  
12 *21-5209, and amendment thereto.* Such notice must be served and filed  
13 before trial and not more than 30 days after entry of the plea of not guilty  
14 to the information or indictment. For good cause shown the court may  
15 permit notice at a later date.

16       ~~(2)(b)~~ A defendant who files a notice of intention to assert ~~the defense~~  
17 ~~that the defendant, as a result of mental disease or defect lacked the mental~~  
18 ~~state required as an element of the offense charged~~ *a defense described in*  
19 *K.S.A. 2021 Supp. 21-5209, and amendment thereto,* thereby submits and  
20 consents to abide by such further orders as the court may make requiring  
21 the mental examination of the defendant and designating the place of  
22 examination and the physician or licensed psychologist by whom such  
23 examination shall be made. No order of the court respecting a mental  
24 examination shall preclude the defendant from procuring at such  
25 defendant's own expense an examination by a physician or licensed  
26 psychologist of such defendant's own choosing. A defendant requesting a  
27 mental examination pursuant to K.S.A. 22-4508, and amendments thereto,  
28 may request a physician or licensed psychologist of such defendant's own  
29 choosing. The judge shall inquire as to the estimated cost for such  
30 examination and shall appoint the requested physician or licensed  
31 psychologist if such physician or licensed psychologist agrees to accept  
32 compensation in an amount in accordance with the compensation  
33 standards set by the board of supervisors of panels to aid indigent  
34 defendants. A report of each mental examination of the defendant shall be  
35 filed in the court and copies thereof shall be supplied to the defendant and  
36 the prosecuting attorney.

37       Sec. 4. K.S.A. 22-3221 is hereby amended to read as follows: 22-  
38 3221. (a) In any case in which the defense has offered substantial evidence  
39 of a mental disease or defect excluding the mental state required as an  
40 element of the offense charged *pursuant to K.S.A. 2021 Supp. 21-5209(a),*  
41 *and amendments thereto,* and the jury returns a verdict of "not guilty," the  
42 jury shall also answer a special question in the following form: "Do you  
43 find the defendant not guilty solely because the defendant, at the time of

1 the alleged crime, was suffering from a mental disease or defect which  
2 rendered the defendant incapable of possessing the required criminal  
3 intent?" ~~The provisions of this section shall be in force and take effect on~~  
4 ~~and after January 1, 1996.~~

5 (b) *In any case in which the defense has offered substantial evidence*  
6 *of a mental disease or defect excluding criminal responsibility for the*  
7 *offense charged pursuant to K.S.A. 2021 Supp. 21-5209(b), and*  
8 *amendments thereto, and the jury returns a verdict of "not guilty," the jury*  
9 *shall also answer a special question in the following form: "Do you find*  
10 *the defendant not guilty solely because the defendant, at the time of the*  
11 *alleged crime, was laboring under such a mental disease or defect as not*  
12 *to know: (1) The nature and quality of such act; or (2) that such act was*  
13 *wrong?"*

14 Sec. 5. K.S.A. 22-3222 is hereby amended to read as follows: 22-  
15 3222. In any case in which the defendant is found not guilty of a charged  
16 crime, and the ~~special question under K.S.A. 22-3221 is answered jury~~  
17 ~~answers~~ in the affirmative to a special question asked pursuant to K.S.A.  
18 22-3221, and amendments thereto, and the defendant is also found guilty  
19 of a lesser included or otherwise charged offense, the court shall proceed  
20 in the manner authorized by K.S.A. 22-3429 et seq., and amendments  
21 thereto. ~~The provisions of this section shall be in force and take effect on~~  
22 ~~and after January 1, 1996.~~

23 Sec. 6. K.S.A. 2021 Supp. 22-3428 is hereby amended to read as  
24 follows: 22-3428. (†) (a) (1) When a defendant is acquitted and the jury  
25 answers in the affirmative to ~~the a~~ a special question asked pursuant to  
26 K.S.A. 22-3221, and amendments thereto, the defendant shall be  
27 committed to the state security hospital for safekeeping and treatment and  
28 the county or district attorney shall provide victim notification. A finding  
29 of not guilty and the jury answering in the affirmative to ~~the a~~ a special  
30 question asked pursuant to K.S.A. 22-3221, and amendments thereto, shall  
31 be prima facie evidence that the acquitted defendant is presently likely to  
32 cause harm to self or others.

33 (b)(2) Within 90 days of the defendant's admission, the chief medical  
34 officer of the state security hospital shall send to the court a written  
35 evaluation report. Upon receipt of the report, the court shall set a hearing  
36 to determine whether or not the defendant is currently a mentally ill  
37 person. The hearing shall be held within 30 days after the receipt by the  
38 court of the chief medical officer's report.

39 (e)(3) The court shall give notice of the hearing to the chief medical  
40 officer of the state security hospital, the district or county attorney, the  
41 defendant and the defendant's attorney. The county or district attorney  
42 shall provide victim notification. The court shall inform the defendant that  
43 such defendant is entitled to counsel and that counsel will be appointed to

1 represent the defendant if the defendant is not financially able to employ  
 2 an attorney as provided in K.S.A. 22-4503 et seq., and amendments  
 3 thereto. The defendant shall remain at the state security hospital pending  
 4 the hearing.

5 ~~(d)~~(4) At the hearing, the defendant shall have the right to present  
 6 evidence and cross-examine witnesses. At the conclusion of the hearing, if  
 7 the court finds by clear and convincing evidence that the defendant is not  
 8 currently a mentally ill person, the court shall dismiss the criminal  
 9 proceeding and discharge the defendant, otherwise the court may commit  
 10 the defendant to the state security hospital for treatment or may place the  
 11 defendant on conditional release pursuant to subsection~~(4)~~ (d). The county  
 12 or district attorney shall provide victim notification regarding the outcome  
 13 of the hearing.

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

15 ~~(a)~~(1) Whenever it appears to the chief medical officer of the state  
 16 security hospital that a person committed under subsection~~(1)~~~~(d)~~ (a)(4) is  
 17 not likely to cause harm to other persons in a less restrictive hospital  
 18 environment, the officer may transfer the person to any state hospital,  
 19 ~~subject to the provisions of subsection (3)~~. At any time subsequent thereto  
 20 during which such person is still committed to a state hospital, if the chief  
 21 medical officer of that hospital finds that the person may be likely to cause  
 22 harm or has caused harm; to others, such officer may transfer the person  
 23 back to the state security hospital.

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

26 ~~(3)~~(c) Before transfer of a person from the state security hospital  
 27 pursuant to subsection~~(2)~~~~(a)~~ (b)(1) or conditional release or discharge of a  
 28 person pursuant to subsection~~(2)~~~~(b)~~ (b)(2), the chief medical officer of the  
 29 state security hospital or the state hospital where the patient is under  
 30 commitment shall give notice to the district court of the county from  
 31 which the person was committed that transfer of the patient is proposed or  
 32 that the patient is ready for proposed conditional release or discharge. Such  
 33 notice shall include, but not be limited to:~~(a)~~ (1) Identification of the  
 34 patient;~~(b)~~ (2) the course of treatment;~~(c)~~ (3) a current assessment of the  
 35 defendant's mental illness;~~(d)~~ (4) recommendations for future treatment, if  
 36 any; and~~(e)~~ (5) recommendations regarding conditional release or  
 37 discharge, if any. Upon receiving notice, the district court shall order that a  
 38 hearing be held on the proposed transfer, conditional release or discharge.  
 39 The court shall give notice of the hearing to the state hospital or state  
 40 security hospital where the patient is under commitment, to the district or  
 41 county attorney of the county from which the person was originally  
 42 ordered committed. The county or district attorney shall provide victim  
 43 notification regarding the hearing. The court shall order the involuntary

1 patient to undergo a mental evaluation by a person designated by the court.  
2 A copy of all orders of the court shall be sent to the involuntary patient and  
3 the patient's attorney. The report of the court ordered mental evaluation  
4 shall be given to the district or county attorney, the involuntary patient and  
5 the patient's attorney at least seven days prior to the hearing. The hearing  
6 shall be held within 30 days after the receipt by the court of the chief  
7 medical officer's notice. The involuntary patient shall remain in the state  
8 hospital or state security hospital where the patient is under commitment  
9 until the hearing on the proposed transfer, conditional release or discharge  
10 is to be held. At the hearing, the court shall receive all relevant evidence,  
11 including the written findings and recommendations of the chief medical  
12 officer of the state security hospital or the state hospital where the patient  
13 is under commitment, and shall determine whether the patient shall be  
14 transferred to a less restrictive hospital environment or whether the patient  
15 shall be conditionally released or discharged. The patient shall have the  
16 right to present evidence at such hearing and to cross-examine any  
17 witnesses called by the district or county attorney. At the conclusion of the  
18 hearing, if the court finds by clear and convincing evidence that the patient  
19 will not be likely to cause harm to self or others if transferred to a less  
20 restrictive hospital environment, the court shall order the patient  
21 transferred. If the court finds by clear and convincing evidence that the  
22 patient is not currently a mentally ill person, the court shall order the  
23 patient discharged or conditionally released; otherwise, the court shall  
24 order the patient to remain in the state security hospital or state hospital  
25 where the patient is under commitment. If the court orders the conditional  
26 release of the patient in accordance with subsection~~(4)~~ (d), the court may  
27 order as an additional condition to the release that the patient continue to  
28 take prescribed medication and report as directed to a person licensed to  
29 practice medicine and surgery to determine whether or not the patient is  
30 taking the medication or that the patient continue to receive periodic  
31 psychiatric or psychological treatment. The county or district attorney shall  
32 notify any victims of the outcome of the hearing.

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

1 gainful employment, undergoing needed vocational rehabilitation,  
2 receiving marital and family counseling, and such other outpatient services  
3 that appear beneficial. If a patient who is to be conditionally released will  
4 be residing in a county other than the county where the district court that  
5 ordered the conditional release is located, the court shall transfer venue of  
6 the case to the district court of the other county and send a copy of all of  
7 the court's records of the proceedings to the other court. In all cases of  
8 conditional release the court shall: ~~(a)~~ (1) Order that the patient be placed  
9 under the temporary supervision of district court probation and parole  
10 services, community treatment facility or any appropriate private agency;  
11 and ~~(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) 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: ~~(a)~~ (1) For additional conditions of  
28 release designed to effect the ends of the reentry program; ~~(b)~~ (2) requiring  
29 the county or district attorney to file a petition to determine whether the  
30 patient is a mentally ill person as provided in K.S.A. 59-2957, and  
31 amendments thereto; or ~~(c)~~ (3) requiring that the patient be committed to  
32 the state security hospital or any state hospital. In cases where a petition is  
33 ordered to be filed, the court shall proceed to hear and determine the  
34 petition pursuant to the care and treatment act for mentally ill persons and  
35 that act shall apply to all subsequent proceedings. If a patient is committed  
36 to any state hospital pursuant to this act the county or district attorney shall  
37 provide victim notification. The costs of all proceedings, the mental  
38 evaluation and the reentry program authorized by this section shall be paid  
39 by the county from which the person was committed.

40 (6)(f) In any case in which ~~the defense that the defendant lacked the~~  
41 ~~required mental state pursuant to K.S.A. 22-3220~~ a defense described in  
42 *K.S.A. 2021 Supp. 21-5209*, and amendments thereto, is relied on, the  
43 court shall instruct the jury on the substance of this section.

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

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

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

9       (A) *Who* is suffering from a severe mental disorder to the extent that  
10 such person is in need of treatment; ~~and~~

11       (B) *who* is likely to cause harm to self or others; *and*

12       (C) *whose diagnosis is not solely one of the following mental*  
13 *disorders: Alcohol or chemical substance abuse; antisocial personality*  
14 *disorder; intellectual disability; organic personality syndrome; or an*  
15 *organic disorder.*

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

20       Sec. 7. K.S.A. 2021 Supp. 22-3428a is hereby amended to read as  
21 follows: 22-3428a. ~~(4)~~(a) Any person found not guilty, pursuant to K.S.A.  
22 ~~22-3220~~ ~~and~~ 22-3221, and amendments thereto, *and K.S.A. 2021 Supp.*  
23 *21-5209, and amendments thereto*, who remains in the state security  
24 hospital or a state hospital for over one year pursuant to a commitment  
25 under K.S.A. 22-3428, and amendments thereto, shall be entitled annually  
26 to request a hearing to determine whether or not the person continues to be  
27 a mentally ill person. The request shall be made in writing to the district  
28 court of the county where the person is hospitalized and shall be signed by  
29 the committed person or the person's counsel. When the request is filed,  
30 the court shall give notice of the request to: ~~(a)~~ (1) The county or district  
31 attorney of the county in which the person was originally ordered  
32 committed; ~~and~~ ~~(b)~~ (2) the chief medical officer of the state security  
33 hospital or state hospital where the person is committed. The chief medical  
34 officer receiving the notice, or the officer's designee, shall conduct a  
35 mental examination of the person and shall send to the district court of the  
36 county where the person is hospitalized and to the county or district  
37 attorney of the county in which the person was originally ordered  
38 committed a report of the examination within 21 days from the date when  
39 notice from the court was received. Within 14 days after receiving the  
40 report of the examination, the county or district attorney receiving it may  
41 file a motion with the district court that gave the notice, requesting the  
42 court to change the venue of the hearing to the district court of the county  
43 in which the person was originally committed, or the court that gave the



1 notice on its own motion may change the venue of the hearing to the  
2 district court of the county in which the person was originally committed.  
3 Upon receipt of that motion and the report of the mental examination or  
4 upon the court's own motion, the court shall transfer the hearing to the  
5 district court specified in the motion and send a copy of the court's records  
6 of the proceedings to that court.

7 (2)(b) After the time in which a change of venue may be requested  
8 has elapsed, the court having venue shall set a date for the hearing, giving  
9 notice thereof to the county or district attorney of the county, the  
10 committed person and the person's counsel. The county or district attorney  
11 shall provide victim notification. If there is no counsel of record, the court  
12 shall appoint a counsel for the committed person. The committed person  
13 shall have the right to procure, at the person's own expense, a mental  
14 examination by a physician or licensed psychologist of the person's own  
15 choosing. If a committed person is financially unable to procure such an  
16 examination, the aid to indigent defendants provisions of article 45 of  
17 chapter 22 of the Kansas Statutes Annotated, and amendments thereto,  
18 shall be applicable to that person. A committed person requesting a mental  
19 examination pursuant to K.S.A. 22-4508, and amendments thereto, may  
20 request a physician or licensed psychologist of the person's own choosing  
21 and the court shall request the physician or licensed psychologist to  
22 provide an estimate of the cost of the examination. If the physician or  
23 licensed psychologist agrees to accept compensation in an amount in  
24 accordance with the compensation standards set by the board of  
25 supervisors of panels to aid indigent defendants, the judge shall appoint  
26 the requested physician or licensed psychologist; otherwise, the court shall  
27 designate a physician or licensed psychologist to conduct the examination.  
28 Copies of each mental examination of the committed person shall be filed  
29 with the court at least seven days prior to the hearing and shall be supplied  
30 to the county or district attorney receiving notice pursuant to this section  
31 and the committed person's counsel.

32 (3)(c) At the hearing the committed person shall have the right to  
33 present evidence and cross-examine the witnesses. The court shall receive  
34 all relevant evidence, including the written findings and recommendations  
35 of the chief medical officer of the state security hospital or state hospital  
36 where the person is under commitment, and shall determine whether the  
37 committed person continues to be a mentally ill person. At the hearing the  
38 court may make any order that a court is empowered to make pursuant to  
39 ~~subsections (3), (4) and (5) of K.S.A. 22-3428(c), (d) and (e), and~~  
40 amendments thereto. If the court finds by clear and convincing evidence  
41 the committed person is not a mentally ill person, the court shall order the  
42 person discharged; otherwise, the person shall remain committed or be  
43 conditionally released. The county or district attorney shall provide victim

1 notification regarding the outcome of the hearing.

2 ~~(4)(d)~~ Costs of a hearing held pursuant to this section shall be  
3 assessed against and paid by the county in which the person was originally  
4 ordered committed.

5 Sec. 8. K.S.A. 22-3219, 22-3221 and 22-3222 and K.S.A. 2021 Supp.  
6 12-736, 21-5209, 22-3428 and 22-3428a are hereby repealed.

7 Sec. 9. This act shall take effect and be in force from and after its  
8 publication in the statute book.