

House Substitute for SENATE BILL No. 12

AN ACT concerning civil commitment of sexually violent predators; amending K.S.A. 59-29a01, 59-29a03 and 59-29a10 and K.S.A. 2014 Supp. 59-2401a, 59-29a04, 59-29a04a, 59-29a05, 59-29a06, 59-29a07, 59-29a08, 59-29a11, 59-29a22, 59-29a23, 59-29a24 and 77-603 and repealing the existing sections; also repealing K.S.A. 59-29a18.

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

Section 1. K.S.A. 59-29a01 is hereby amended to read as follows: 59-29a01. (a) The legislature finds that there exists an extremely dangerous group of sexually violent predators who have a mental abnormality or personality disorder and who are likely to engage in repeat acts of sexual violence if not treated for their mental abnormality or personality disorder. Because the existing civil commitment procedures under K.S.A. 59-2901 et seq., and amendments thereto, are inadequate to address the special needs of sexually violent predators and the risks they present to society, the legislature determines that a separate involuntary civil commitment process for the potentially long-term control, care and treatment of sexually violent predators is necessary. The legislature also determines that because of the nature of the mental abnormalities or personality disorders from which sexually violent predators suffer and the dangers they present, it is necessary to house involuntarily committed sexually violent predators in an environment separate from persons involuntarily committed under K.S.A. 59-2901 et seq., and amendments thereto.

(b) Notwithstanding any other evidence of legislative intent, it is hereby declared that any time requirements set forth in K.S.A. 59-29a01 et seq., and amendments thereto, either as originally enacted or as amended, are intended to be directory and not mandatory and serve as guidelines for conducting proceedings under K.S.A. 59-29a01 et seq., and amendments thereto.

(c) *The provisions of K.S.A. 59-29a01 et seq., and amendments thereto, shall be known and may be cited as the Kansas sexually violent predator act.*

Sec. 2. K.S.A. 59-29a03 is hereby amended to read as follows: 59-29a03. (a) When it appears that a person may meet the criteria of a sexually violent predator as defined in K.S.A. 59-29a02, and amendments thereto, the agency with jurisdiction shall give written notice of such to the attorney general and the multidisciplinary team established in subsection ~~(d)~~ (f), 90 days prior to:

(1) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of persons who are returned to prison for no more than 90 days as a result of revocation of postrelease supervision, written notice shall be given as soon as practicable following the person's readmission to prison;

(2) release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to K.S.A. 22-3305, and amendments thereto;

(3) release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to K.S.A. 22-3428, and amendments thereto; or

(4) release of a person who has been found not guilty of a sexually violent offense pursuant to K.S.A. 22-3428, and amendments thereto, and the jury who returned the verdict of not guilty answers in the affirmative to the special question asked pursuant to K.S.A. 22-3221, and amendments thereto.

(b) The agency with jurisdiction shall inform the attorney general and the multidisciplinary team established in subsection ~~(d)~~ (f) of the following:

(1) The person's name, identifying factors, anticipated future residence and offense history; and

(2) documentation of institutional adjustment and any treatment received.

(c) *Any reports of evaluations prepared or provided pursuant to subsection (b) shall demonstrate that the person evaluated was informed of the following: (1) The nature and purpose of the evaluation; and (2) that the evaluation will not be confidential and that any statements made by the person and any conclusions drawn by the evaluator may be disclosed to a court, the detained person's attorney, the prosecutor and the trier of fact at any proceeding conducted under the Kansas sexually violent predator act.*

(d) *The permitted disclosures required to be submitted to the attorney*

general under this section shall be deemed to be in response to the attorney general's civil demand for relevant and material information to investigate whether a petition shall be filed. The information provided shall be specific to the purposes of the Kansas sexually violent predator act and as limited in scope as reasonably practicable.

~~(e)~~(e) The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection ~~(d)~~(f), members of the prosecutor's review committee appointed as provided in subsection ~~(e)~~(g) and individuals contracting, appointed or volunteering to perform services hereunder shall be immune from liability for any good-faith conduct under this section.

~~(d)~~(f) The secretary of corrections shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection (a). *The team shall include the mental health professional who prepared any evaluation, interviewed the person or made any recommendation to the attorney general.* The team, ~~within 30 days of receiving notice,~~ shall assess whether or not the person meets the definition of a sexually violent predator, as established in K.S.A. 59-29a02, and amendments thereto. The team shall notify the attorney general of its assessment.

~~(e)~~(g) The attorney general shall appoint a prosecutor's review committee to review the records of each person referred to the attorney general pursuant to subsection (a). The prosecutor's review committee shall assist the attorney general in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the attorney general and the prosecutor's review committee.

~~(f)~~(h) The provisions of this section are not jurisdictional and failure to comply with such provisions *not affecting constitutional rights* in no way prevents the attorney general from proceeding against a person otherwise subject to the ~~provision of K.S.A. 59-29a01 et seq. and amendments thereto~~ *provisions of the Kansas sexually violent predator act.*

Sec. 3. K.S.A. 2014 Supp. 59-29a04 is hereby amended to read as follows: 59-29a04. (a) ~~When it appears that the person presently confined may be a sexually violent predator and the prosecutor's review committee, appointed as provided in subsection (e) of K.S.A. 59-29a03(g), and amendments thereto, has determined that the person meets the definition of a sexually violent predator, the attorney general, within 75 days of the date the attorney general received the written notice by the agency of jurisdiction as provided in subsection (a) of K.S.A. 59-29a03(a), and amendments thereto, may file a petition in the county where the person was convicted of or charged with a sexually violent offense alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.~~

(b) Notwithstanding the provisions of subsection (a), when the person named in the petition is a person who has been convicted of or charged with a federal or other state offense that under the laws of this state would be a sexually violent offense, as defined in K.S.A. 59-29a02, and amendments thereto, the attorney general may file the petition in the county where the person now resides, was charged or convicted of any offense, or was released.

(c) Service of the petition on the attorney appointed or hired to represent the person shall be deemed sufficient service.

~~(b)~~(d) The provisions of this section are not jurisdictional, and failure to comply with such provisions *not affecting constitutional rights* in no way prevents the attorney general from proceeding against a person otherwise subject to the ~~provision of K.S.A. 59-29a01 et seq., and amendments thereto~~ *provisions of the Kansas sexually violent predator act.*

~~(e)~~(e) Whenever a determination is made regarding whether a person may be a sexually violent predator, the county responsible for the costs incurred, including, but not limited to, costs of investigation, prosecution, defense, juries, witness fees and expenses, expert fees and expenses and other expenses related to determining whether a person may be a sexually violent predator, shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide

such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and amendments thereto.

(f) *The person against whom a petition is filed shall be responsible for the costs of the medical care and treatment provided or made accessible by the governmental entity having custody, and the governmental entity having custody may seek reimbursement from the person against whom a petition has been filed for such costs.*

(g) *Pre-commitment proceedings, post-commitment proceedings, including conditional release and final discharge and other court proceedings are civil in nature. Such proceedings shall follow the procedures set forth in chapter 60 of the Kansas Statutes Annotated, and amendments thereto, except as expressly provided elsewhere in the Kansas sexually violent predator act.*

Sec. 4. K.S.A. 2014 Supp. 59-29a04a is hereby amended to read as follows: 59-29a04a. (a) There is hereby created in the state treasury the sexually violent predator expense fund which shall be administered by the attorney general. All moneys credited to such fund shall be used to reimburse counties under:

(1) K.S.A. 59-29a04, and amendments thereto, responsible for the costs related to determining whether a person may be a sexually violent predator; and

(2) K.S.A. 2014 Supp. 59-29a23, and amendments thereto, for the costs related to a person filing a ~~petition pursuant to K.S.A. 60-1501 et seq., and amendments thereto,~~ *civil action* relating to the civil commitment pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto~~ *the Kansas sexually violent predator act.*

(b) All expenditures from the sexually violent predator expense fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the attorney general or the attorney general's designee.

Sec. 5. K.S.A. 2014 Supp. 59-29a05 is hereby amended to read as follows: 59-29a05. (a) Upon filing of a petition under K.S.A. 59-29a04, *and amendments thereto*, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall:

(1) Direct that person be taken into custody *and detained in the county jail until such time as a determination is made that the person is a sexually violent predator subject to commitment under the Kansas sexually violent predator act;* and

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

(b) Within 72 hours after a person is taken into custody pursuant to subsection (a), *or as soon as reasonably practicable or agreed upon by the parties*, such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall: (1) Verify the detainer's identity; and (2) determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

(c) At the probable cause hearing as provided in subsection (b), the detained person shall have the following rights in addition to the rights previously specified: (1) To be represented by counsel; (2) to present evidence on such person's behalf; (3) to cross-examine witnesses who testify against such person; and (4) to view and copy all petitions and reports in the court file.

(d) If the probable cause determination is made, the court shall order that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The evaluation ordered by the court shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

(e) The person conducting the evaluation ordered by the court pur-

suant to this section shall notify the detained person of the following: (1) The nature and purpose of the evaluation; and (2) that the evaluation will not be confidential and that any statements made by the detained person and any conclusions drawn by the evaluator, will be disclosed to the court, the detained person's attorney, the prosecutor and the trier of fact at any proceeding conducted under ~~K.S.A. 59-29a01 et seq. and amendments thereto~~ *the Kansas sexually violent predator act*.

Sec. 6. K.S.A. 2014 Supp. 59-29a06 is hereby amended to read as follows: 59-29a06. (a) Within 60 days after the completion of any hearing held pursuant to K.S.A. 59-29a05, and amendments thereto, the court shall ~~conduct a trial~~ *set the matter for a pretrial conference to establish a mutually agreeable date for trial* to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice and when the respondent will not be substantially prejudiced.

(b) ~~At all stages of the proceedings under K.S.A. 59-29a01 et seq., and amendments thereto, any person subject to K.S.A. 59-29a01 et seq., and amendments thereto, In proceedings under this section, the person shall be entitled to the assistance of counsel and an independent examination pursuant to K.S.A. 60-235, and amendments thereto, and if the person is indigent, the court shall appoint counsel to assist such person. Whenever any person is subjected to an examination under K.S.A. 59-29a01 et seq., and amendments thereto, such person may retain experts or professional persons to perform an examination of such person's behalf. When the person wishes to be examined by a qualified expert or professional person of such person's own choice, such pursuant to K.S.A. 60-235, and amendments thereto, the examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the person's request, shall determine whether the services are necessary and reasonable compensation for such services. If the court determines that the services are necessary and the expert or professional person's examiner's requested compensation for such services is reasonable, the court shall assist the person in obtaining an expert or professional person examiner to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source.~~

(c) Notwithstanding K.S.A. 60-456, and amendments thereto, at any proceeding conducted under ~~K.S.A. 59-29a01 et seq., and amendments thereto~~ *the Kansas sexually violent predator act*, the parties shall be permitted to call expert witnesses. The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If the facts or data are of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, such facts and data need not be admissible in evidence in order for the opinion or inference to be admitted.

(d) The person, the attorney general, or the judge shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four days prior to trial. Number and selection of jurors shall be determined as provided in K.S.A. 22-3403, and amendments thereto. If no demand is made, the trial shall be before the court.

(e) A jury shall consist of 12 jurors unless the parties agree in writing with the approval of the court that the jury shall consist of any number of jurors less than 12 jurors. The person and the attorney general shall each have eight peremptory challenges, or in the case of a jury of less than 12 jurors, a proportionally equal number of peremptory challenges.

(f) ~~The provisions of this section are not jurisdictional and failure to comply with such provisions in no way prevents the attorney general from proceeding against a person otherwise subject to the provision of K.S.A. 59-29a01 et seq. and amendments thereto~~ *Notwithstanding any other*

provision of law to the contrary, the provisions of this section relating to jury trials shall not apply to proceedings for annual review or proceedings on a petition for transitional release, conditional release or final discharge.

Sec. 7. K.S.A. 2014 Supp. 59-29a07 is hereby amended to read as follows: 59-29a07. (a) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If such determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of such jury. Such determination may be appealed *in the manner provided for civil cases in article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto.* If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the secretary for aging and disability services for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. Such control, care and treatment shall be provided at a facility operated by the Kansas department for aging and disability services.

(b) At all times, persons committed for control, care and treatment by the Kansas department for aging and disability services pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ *the Kansas sexually violent predator act* shall be kept in a secure facility and such persons shall be segregated ~~at all times on different units~~ from any other patient under the supervision of the secretary for aging and disability services and commencing June 1, 1995, such persons committed pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ *the Kansas sexually violent predator act* shall be kept in a facility or building separate from any other patient under the supervision of the secretary. The provisions of this subsection shall apply to any facility or building utilized in any transitional release program or conditional release program.

(c) The Kansas department for aging and disability services is authorized to enter into an interagency agreement with the department of corrections for the confinement of such persons. Such persons who are in the confinement of the secretary of corrections pursuant to an interagency agreement shall be housed and managed separately from offenders in the custody of the secretary of corrections, and except for occasional instances of supervised incidental contact, shall be segregated from such offenders.

(d) If any person while committed to the custody of the secretary pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ *the Kansas sexually violent predator act* shall be taken into custody by any law enforcement officer as defined in K.S.A. 2014 Supp. 21-5111, and amendments thereto, pursuant to any parole revocation proceeding or any arrest or conviction for a criminal offense of any nature, upon the person's release from the custody of any law enforcement officer, the person shall be returned to the custody of the secretary for further treatment pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ *the Kansas sexually violent predator act*. During any such period of time a person is not in the actual custody or supervision of the secretary, the secretary shall be excused from the provisions of K.S.A. 59-29a08, and amendments thereto, with regard to providing that person an annual examination, annual notice and annual report to the court, except that the secretary shall give notice to the court as soon as reasonably possible after the taking of the person into custody that the person is no longer in treatment pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ *the Kansas sexually violent predator act* and notice to the court when the person is returned to the custody of the secretary for further treatment.

(e) If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the person's release.

(f) Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within 90 days of the previous trial, unless such subsequent trial is continued as provided in K.S.A. 59-29a06, and amendments thereto.

(g) If the person charged with a sexually violent offense has been found incompetent to stand trial and is about to be released pursuant to

K.S.A. 22-3305 and amendments thereto and such person's commitment is sought pursuant to subsection (a), the court shall first hear evidence and determine whether the person did commit the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on such person's own behalf, the extent to which the evidence could be reconstructed without the assistance of the person and the strength of the prosecution's case. If after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue and may proceed to consider whether the person should be committed pursuant to this section.

Sec. 8. K.S.A. 2014 Supp. 59-29a08 is hereby amended to read as follows: 59-29a08. (a) Each person committed under ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ *the Kansas sexually violent predator act* shall have a current examination of the person's mental condition made once every year. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall also forward the annual report, as well as the annual notice and waiver form, to the court that committed the person under ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ *the Kansas sexually violent predator act*. The person may retain, or if the person is indigent and so requests the court may appoint a qualified professional person to examine such person, and such expert or professional person shall have access to all records concerning the person. The court that committed the person under ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ *the Kansas sexually violent predator act* shall then conduct an annual review of the status of the committed person's mental condition. The committed person shall have a right to have an attorney represent the person at the hearing but the person is not entitled to be present at the hearing.

(b) Nothing contained in ~~K.S.A. 59-29a01 et seq., and amendments thereto,~~ *the Kansas sexually violent predator act* shall prohibit the person *in conditional release* from otherwise petitioning the court for discharge ~~at this~~ *the annual review* hearing.

(c) ~~(1)~~ If the court at the *annual review* hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be placed in transitional release, then the court shall set a hearing on the issue.

~~(2) The court may order and hold a hearing when:~~

~~(A) There is current evidence from an expert or professional person that an identified physiological change to the committed person, such as paralysis, stroke or dementia, that renders the committed person unable to commit a sexually violent offense and this change is permanent; and~~

~~(B) the evidence presents a change in condition since the person's last hearing.~~

~~(3) At either hearing,~~ The committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person ~~at the initial commitment proceeding pursuant to K.S.A. 59-29a06, and amendments thereto.~~ The attorney general shall represent the state and shall have a right ~~to a jury trial and~~ to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof ~~at either hearing~~ *the hearing for transitional release* shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder remains such that the person is not safe to

be placed in transitional release and if transitionally released is likely to engage in acts of sexual violence.

(d) If, after the hearing, the court ~~or jury~~ is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(e) If the court determines that the person should be placed in transitional release, the secretary shall transfer the person to the transitional release program. The secretary may contract for services to be provided in the transitional release program. During any period the person is in transitional release, that person shall comply with any rules or regulations the secretary may establish for this program and every directive of the treatment staff of the transitional release program.

(f) At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written, facsimile or electronic form delivered to the court by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(g) Upon the person being returned to the secure commitment facility from the transitional release program, notice thereof shall be given by the secretary to the court. The court shall set the matter for a hearing within two working days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

Sec. 9. K.S.A. 59-29a10 is hereby amended to read as follows: 59-29a10. (a) If the secretary determines that the person's mental abnormality or personality disorder has so changed that the person is not likely to engage in repeat acts of sexual violence if placed in transitional release, the secretary shall authorize the person to petition the court for transitional release. The petition shall be served upon the court and the attorney general. The court, upon ~~receipt~~ *service* of the petition for transitional release, shall ~~order~~ *issue notice of a hearing to be scheduled* within 30 days. The attorney general shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of such attorney's choice. ~~The hearing shall be before a jury if demanded by either the petitioner or the attorney general.~~ The burden of proof shall be upon the attorney general to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder remains such that the petitioner is not safe to be at large and that if placed in transitional release is likely to engage in repeat acts of sexual violence.

(b) If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not ~~appropriate~~ *sufficiently safe to warrant* transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

(c) The provisions of ~~subsections (e), (f) and (g)~~ of K.S.A. 59-29a08(e), (f) and (g), and amendments thereto, shall apply to a transitional release pursuant to this section.

Sec. 10. K.S.A. 2014 Supp. 59-29a11 is hereby amended to read as follows: 59-29a11. (a) ~~Nothing in this act shall prohibit a person from filing a petition for transitional release, conditional release or final discharge pursuant to this act. However, if a person has previously filed a~~

petition for transitional release, conditional release or final discharge without the secretary for aging and disability services approval and the court determined either upon review of the petition or following a hearing, that the ~~petitioner's person's~~ petition was frivolous or that the ~~petitioner's person's~~ condition had not ~~so changed that the person was safe~~ significantly changed so that it is safe for the person to be at large, then the court shall deny the subsequent petition, unless the petition contains facts upon which a court could find the condition of the petitioner had ~~so changed~~ significantly changed so that a hearing was warranted. Upon receipt of a first or subsequent petition from committed persons without the secretary's approval, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds and if so shall deny the petition without a hearing.

(b) No transitional release or conditional release facility or building shall be located within 2,000 feet of a licensed child care facility, an established place of worship, any residence in which a child under 18 years of age resides, or the real property of any school upon which is located a structure used by a unified school district or an accredited nonpublic school for student instruction or attendance or extracurricular activities of pupils enrolled in kindergarten or any grades one through 12. This subsection shall not apply to any state institution or facility.

(c) Transitional release or conditional release facilities or buildings shall be subject to all regulations applicable to other property and buildings located in the zone or area that are imposed by any municipality through zoning ordinance, resolution or regulation, such municipality's building regulatory codes, subdivision regulations or other nondiscriminatory regulations.

(d) On and after ~~January 1, 2009~~ July 1, 2015, the secretary for aging and disability services shall place no more than ~~eight~~ 16 sexually violent predators in any one county on transitional release or conditional release.

(e) The secretary for aging and disability services shall submit an annual report to the governor and the legislature during the first week of the regular legislative session detailing activities related to the transitional release and conditional release of sexually violent predators. The report shall include the status of such predators who have been placed in transitional release or conditional release including the number of any such predators and their locations; information regarding the number of predators who have been returned to the sexually violent predator treatment program at Larned state hospital along with the reasons for such return; and any plans for the development of additional transitional release or conditional release facilities.

Sec. 11. K.S.A. 2014 Supp. 59-29a22 is hereby amended to read as follows: 59-29a22. (a) As used in this section:

(1) "~~Patient~~ Person" means any individual:

(A) Who is receiving services for mental illness and who is admitted, detained, committed, transferred or placed in the custody of the secretary for aging and disability services under the authority of K.S.A. 22-3219, 22-3302, 22-3303, 22-3428a, 22-3429, 22-3430, 59-29a05, 75-5209 and 76-1306, and amendments thereto.

(B) In the custody of the secretary for aging and disability services after being found a sexually violent predator pursuant to ~~K.S.A. 59-29a01 et seq., and amendments thereto~~ the Kansas sexually violent predator act, including any sexually violent predator placed on transitional release.

(2) "Restraints" means the application of any devices, other than human force alone, to any part of the body of the ~~patient~~ person for the purpose of preventing the ~~patient~~ person from causing injury to self or others.

(3) "Seclusion" means the placement of a ~~patient~~ person, alone, in a room, where the ~~patient's~~ person's freedom to leave is restricted and where the ~~patient~~ person is not under continuous observation.

(4) "Emergency lockdown" means a safety measure used to isolate all or a designated number of persons greater than one to their rooms for a period necessary to ensure a safe and secure environment.

(5) "Individual person management plan" means a safety measure used to isolate an individual person when the person presents a safety or security risk that cannot be addressed through routine psychiatric methods.

(b) Each ~~patient~~ *person* shall have the following *statutory* rights:

(1) Upon admission or commitment, *to* be informed orally and in writing of the ~~patient's~~ *person's* rights under this section. Copies of this section shall be posted conspicuously in each ~~patient area~~ *facility*, and shall be available to the ~~patient's~~ *person's* guardian and immediate family.

(2) ~~The right~~ To refuse to perform labor which is of financial benefit to the facility in which the ~~patient~~ *person* is receiving treatment or service. Privileges or release from the facility may not be conditioned upon the performance of any labor which is regulated by this subsection. Tasks of a personal housekeeping nature are not considered compensable labor. ~~Patients~~ *A person* may voluntarily engage in therapeutic labor which is of financial benefit to the facility if such labor is compensated in accordance with a plan approved by the department and if:

(A) The ~~specific~~ labor is an integrated part of the ~~patient's~~ *person's* treatment plan ~~approved as a therapeutic activity by the professional staff member responsible for supervising the patient's treatment;~~

(B) the labor is supervised by a staff member who is qualified to oversee the therapeutic aspects of the activity;

(C) the ~~patient~~ *person* has given written informed consent to engage in such labor and has been informed that such consent may be withdrawn at any time; and

(D) the labor involved is evaluated for its appropriateness by the staff of the facility at least once every ~~120~~ *180* days.

(3) ~~A right~~ To receive prompt and adequate treatment, ~~rehabilitation and educational services~~ appropriate for such ~~patient's~~ *person's* condition; ~~within the limits of available state and federal funds.~~

(4) ~~Have the right~~ To be informed of such ~~patient's~~ *person's* treatment and care and to participate in the planning of such treatment and care.

~~(5) Have the following rights, under the following procedures, to refuse medication and treatment:~~

~~(A) Have the right To refuse all medication and treatment except as ordered by a court or in a situation in which the medication or treatment is necessary to prevent serious physical harm to the patient or to others. Except when medication or medical treatment has been ordered by the court or is necessary to prevent serious physical harm to others as evidenced by a recent overt act, attempt or threat to do such harm, a patient may refuse medications and medical treatment if the patient is a member of a recognized religious organization and the religious tenets of such organization prohibit such medications and treatment.~~

~~(5) To refuse to consent to the administration of any medication prescribed for medical or psychiatric treatment, except in a situation in which the person is in a mental health crisis and less restrictive or intrusive measures have proven to be inadequate or clinically inappropriate. Treatment for a mental health crisis shall include medication or treatment necessary to prevent serious physical harm to the person or to others. After full explanation of the benefits and risks of such medication, the medication may be administered over the person's objection, except that the objection shall be recorded in the person's medical record and at the same time written notice thereof shall be forwarded to the medical director of the treatment facility or the director's designee. Within five days after receiving such notice, excluding Saturdays, Sundays and legal holidays, the medical director or designee shall deliver to the person's medical provider the medical director's or designee's written decision concerning the administration of that medication, and a copy of that decision shall be placed in the person's medical record.~~

~~(B)(A)~~ Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program; or in quantities that interfere with a ~~patient's~~ *person's* treatment program.

~~(C)(B)~~ ~~Patients~~ *A person* will have the right to have explained the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered.

(6) ~~Except as provided in paragraph (2), have a right to be free from physical restraint and seclusion~~ *To be subjected to restraint, seclusion, emergency lockdown, individual person management plan, or any combination thereof, only as provided in this subsection.*

(A) ~~Restraints or, seclusion shall not be applied to a patient unless, or both, may be used in the following circumstances:~~

~~(i) If it is determined by the superintendent of the treatment facility or a physician or licensed psychologist medical staff to be necessary to prevent immediate substantial bodily injury to the patient person or others and that other alternative methods to prevent such injury are not sufficient to accomplish this purpose. Restraint or seclusion shall never be used as a punishment or for the convenience of staff. When used, the extent of the restraint or seclusion applied to the patient person shall be the least restrictive measure necessary to prevent such injury to the patient person or others, and the use of restraint or seclusion in a treatment facility shall not exceed three hours without medical reevaluation. When restraints or seclusion are applied, there shall be monitoring of the patient's person's condition at a frequency determined by the treating physician or licensed psychologist, which shall be no less than once per each 15 30 minutes. The superintendent of the treatment facility or a physician or licensed psychologist shall sign a statement explaining the treatment necessity for the use of any restraint or seclusion and shall make such statement a part of the permanent treatment record of the patient person.~~

~~(ii) For security reasons during transport to or from the person's unit, including, but not limited to, transport to another treatment or health care facility, another secure facility or court. Any person committed or transferred to a hospital or other health care facility for medical care may be isolated for security reasons within a locked area.~~

(B) ~~The provisions of clause (A) shall not prevent Emergency lockdown may be used in the following circumstances:~~

~~(i) The use of seclusion as part of a treatment methodology that calls for time out when the patient is refusing to participate in a treatment or has become disruptive of a treatment process.~~

~~(ii) Patients may be restrained for security reasons during transport to or from the patient's building, including transport to another treatment facility. Any patient committed or transferred to a hospital or other health care facility for medical care may be isolated for security reasons within locked facilities in the hospital.~~

~~(iii) Patients may be locked or restricted in such patient's room during the night shift, if such patient resides in a unit in which each room is equipped with a toilet and sink or if the patients who do not have toilets in the rooms shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.~~

~~(iv) Patients may be locked in such patient's room for a period of time no longer than one hour during each change of shift by staff to permit staff review of patient needs.~~

~~(v)(i) Patients may also be locked in such patient's room on a unit-wide or facility-wide basis. When necessary as an emergency measure as needed for security purposes, to deal with an escape or attempted escape, the discovery of a dangerous weapon or explosive device in the unit or facility or the receipt of reliable information that a dangerous weapon or explosive device is in the unit or facility, or to prevent or control a riot or the taking of a hostage or for the discovery of contraband or a unit-wide search. A unit-wide or facility-wide emergency isolation. An emergency lockdown order may only be authorized only by the superintendent of the facility where the order is applicable or the superintendent's designee. A unit-wide or facility-wide emergency isolation order shall be approved within one hour after it is authorized by the superintendent or the superintendent's designee.~~

~~(ii) During a period of emergency lockdown, the status of each person shall be reviewed every 30 minutes to ensure the safety of the person, and each person who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.~~

~~(iii) The facility shall have a written policy covering the use of emergency lockdown that ensures the safety of the individual is secured and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required.~~

~~(iv) An emergency order for unit-wide or facility-wide isolation lockdown order may only be in effect for the period of time needed to preserve order while dealing with the situation and may not be used as a substitute for adequate staffing. During a period of unit-wide or facility-~~

~~wide isolation, the status of each patient shall be reviewed every 30 minutes to ensure the safety and comfort of the patient, and each patient who is locked in a room without a toilet shall be given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated. The facility shall have a written policy covering the use of isolation that ensures that the dignity of the individual is protected, that the safety of the individual is secured, and that there is regular, frequent monitoring by trained staff to care for bodily needs as may be required.~~

~~(vi) Individual patients who are referred by the court or correctional facilities for criminal evaluations may be placed in administrative confinement for security reasons and to maintain proper institutional management when treatment cannot be addressed through routine psychiatric methods. Administrative confinement of individuals shall be limited to only patients that demonstrate or threaten substantial injury to other patients or staff and when there are no clinical interventions available that will be effective to maintain a safe and therapeutic environment for both patients and staff. Administrative confinement shall not be used for any patient who is actively psychotic or likely to be psychologically harmed. The status of each patient shall be reviewed every 15 minutes to ensure the safety and comfort of the patient. The patient shall be afforded all patient rights including being offered a minimum of one hour of supervised opportunity for personal hygiene, exercise and to meet other personal needs.~~

~~(C) Individual person management plan may be used in any of the following situations:~~

~~(i) As needed when a person demonstrates or threatens substantial injury to others, and routine psychiatric methods have been ineffective or are unlikely to be effective in reducing such risk.~~

~~(ii) As needed for safety or security purposes, to deal with an escape or attempted escape, the discovery of a dangerous weapon or explosive device in the unit or facility or the receipt of reliable information that a dangerous weapon or explosive device is in the unit or facility, to prevent or control a riot or the taking of a hostage or for the discovery of contraband.~~

~~(iii) The status of the person shall be reviewed every 30 minutes to ensure the safety of the person.~~

~~(D) Restraint, seclusion, emergency lockdown, individual person management plan, or any combination thereof, may be used in any other situation deemed necessary by treatment staff for the safety of a person or persons, facility staff or visitors. In all situations, restraint, seclusion, emergency lockdown, or individual person management plan shall never be used as a punishment or for the convenience of staff.~~

~~(E) A person may be locked or restricted in such person's room during the night shift if such person resides in a unit in which each room is equipped with a toilet and sink or, if a person does not have a toilet in the room, if such person is given an opportunity to use a toilet at least once every hour, or more frequently if medically indicated.~~

~~(7) The right not to not be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the patient person or the written consent of a parent or legal guardian, if such patient person is a minor or has a legal guardian provided that the guardian has obtained authority to consent to such from the court which has venue over the guardianship following a hearing held for that purpose.~~

~~(8) The right To individual religious worship within the facility if the patient person desires such an opportunity, as long as it complies with applicable laws and facility rules and policies. The provisions for worship shall be available to all patients persons on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.~~

~~(9) A right To a humane psychological and physical environment within the hospital facilities. All facilities shall be designed to afford patients with comfort and safety, to promote dignity and ensure privacy. Facilities shall also be designed to make a positive contribution to the effective attainment of the treatment goals of the hospital.~~

~~(10) The right To confidentiality of all treatment records; and, as permitted by other applicable state or federal laws, have the right to inspect and to, upon receipt of payment of reasonable costs, to receive a copy of such records. The head of any treatment facility or designee who~~

has the records may refuse to disclose portions of such records if the head of the treatment facility or designee states in writing that such disclosure will likely be injurious to the welfare of the person.

(11) Except as otherwise provided, ~~have a right~~ to not be filmed or taped, unless the ~~patient person~~ signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the ~~patient person~~ for a particular purpose or project during a specified time period. The ~~patient person~~ may specify in such consent periods during which, or situations in which, the ~~patient person~~ may not be filmed or taped. If a ~~patient person~~ is legally incompetent, such consent shall be granted on behalf of the ~~patient person~~ by the ~~patient's person's~~ guardian. A ~~patient person~~ may be filmed or taped for security purposes without the ~~patient's person's~~ consent.

(12) ~~The right~~ To be informed in writing upon or at a reasonable time after admission, of any liability that the patient or any of the patient's relatives may have for the cost of the patient's care and treatment and of the right to receive information about charges for care and treatment services.

(13) ~~The right~~ To be treated with respect and recognition of the patient's dignity and individuality by all employees of the treatment facility.

(14) ~~Patients have an unrestricted right~~ To send sealed mail and receive sealed mail to or from legal counsel, the courts, the secretary for aging and disability services, the superintendent of the treatment facility, the agency designated as the developmental disabilities protection and advocacy agency pursuant to P.L. 94-103, as amended, private physicians and licensed psychologists, ~~and~~. A *person who is indigent may* have reasonable access to letter-writing materials.

~~(15) The right as specified under clause (A) to send and receive sealed mail, subject to the limitations specified under clause (B):~~

~~(A) A patient shall also have a right to send sealed mail and receive sealed mail to or from other persons, subject to physical examination in the patient's presence if there is reason to believe that such communication contains contraband materials or objects that threaten the security of patients or staff. The officers and staff of a facility may not read any mail covered by this clause.~~

~~(B) The above rights to send and receive sealed and confidential mail are subject to the following limitations:~~

~~(15) To send and receive mail with reasonable limitations. A person's mail is subject to physical examination and inspection for contraband, as defined by facility rules and policies.~~

~~(i)(A) An officer or employee of the facility at which the patient person is placed may delay delivery of the mail to the patient person for a reasonable period of time to verify whether the mail contains contraband, as defined by facility rules and policies, or whether the person named as the sender actually sent the mail; may open the mail and inspect it for contraband outside the presence of the patient; or may, if the officer or staff member cannot determine whether the mail contains contraband, return the mail to the sender along with notice of the facility mail policy. If contraband is found, such contraband may be returned to the sender or confiscated by the facility. If the officer or staff member cannot determine whether the person named as the sender actually sent the mail, the officer or staff member may return the mail to the sender along with notice of the facility mail policy.~~

~~(ii)(B) The superintendent of the facility or the superintendent's designee may, in accordance with the standards and the procedure under subsection (c) for denying a right for cause, authorize a member of the facility treatment staff to read the mail, if the superintendent or the superintendent's designee has reason to believe that the mail could pose a threat to security at the facility or seriously interfere with the treatment, rights, or safety of the patient person or others.~~

~~(iii) Residents may be restricted in receiving in the mail items deemed to be pornographic, offensive or which is deemed to jeopardize their individual treatment or that of others.~~

~~(C) A person may not receive through the mail any sexually explicit materials, items that are considered contraband, as defined by facility rules and policies, or items deemed to jeopardize the person's individual treatment, another person's treatment or the therapeutic environment of the facility.~~

(16) Reasonable access to a telephone to make and receive telephone calls within reasonable limits.

(17) ~~Be permitted to use and wear such patient's~~ *To wear and use such person's own clothing and personal possessions, including toilet articles, as long as such wear and use complies with facility rules and policies, or to be furnished with an adequate allowance of clothes if none are available. Provision shall be made to launder the patient's clothing.*

(18) *To possess personal property in a reasonable amount, as long as the property complies with state laws and facility rules and policies, and be provided a reasonable amount of individual secure storage space for private use pursuant to facility rules and policies. In no event shall a person be allowed to possess or store contraband.*

(19) Reasonable protection of privacy in such matters as toileting and bathing.

(20) ~~Be permitted~~ *To see a reasonable number of visitors who do not pose a threat to the safety and security or therapeutic climate of other patients the person, other persons, visitors or the facility.*

(21) ~~The right~~ *To present grievances under the procedures established by each facility on the patient's person's own behalf or that of others to the staff or superintendent of the treatment facility without justifiable fear of reprisal and to communicate, subject to paragraph (14), with public officials or with any other person without justifiable fear of reprisal.*

(22) ~~The right~~ *To spend such patient's person's money as such patient person chooses with reasonable limitations, except under the following circumstances: (A) When restricted by facility rules and policies; or (B) to the extent that authority over the money is held by another, including the parent of a minor, a court-appointed guardian of the patient's person's estate or a representative payee. A treatment facility may, as a part of its security procedures, use a patient trust account in lieu of currency that is held by a patient person, and may establish reasonable policies governing patient account transactions.*

(c) (1) ~~A patient's rights guaranteed~~ *A person's rights under subsections (b)(15) to (b)(21) (22) may be denied for cause after review by the superintendent of the facility or the superintendent's designee, and may be denied or when medically or therapeutically contraindicated as documented by the patient's physician or licensed psychologist person's physician, licensed psychologist or licensed master's level psychologist in the patient's person's treatment record. The individual shall be informed in writing of the grounds for withdrawal of the right and shall have the opportunity for a review of the withdrawal of the right in an informal hearing before the superintendent of the facility or the superintendent's designee. There shall be documentation of the grounds for withdrawal of rights in the patient's person's treatment record. After an informal hearing is held, a patient or such patient's representative may petition for review of the denial of any right under this subsection through the use of the grievance procedure provided in subsection (d).*

(2) *Notwithstanding subsection (c)(1), when the facility makes an administrative decision that applies equally to all persons and there is a legitimate governmental reason for the decision, notice of the decision is all that is required.*

(d) The secretary for aging and disability services shall establish procedures to assure protection of ~~patients'~~ *persons'* rights guaranteed under this section.

(e) No person may intentionally retaliate or discriminate against any ~~patient person~~ or employee for contacting or providing information to any state official or to an employee of any state protection and advocacy agency, or for initiating, participating in, or testifying in a grievance procedure or in an action for any remedy authorized under this section.

(f) (1) ~~This section shall be a part of and supplemental to article 29a of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.~~ *Proceedings under this section or any other appeal concerning an action by the Kansas department for aging and disability services shall be governed under the Kansas administrative procedure act and the Kansas judicial review act. A person appealing any alleged violations of this section or any other agency determination shall exhaust all administrative remedies available through the Larned state hospital, including the sexual predator treatment program, before having any right to request a hearing under the Kansas administrative procedure act.*

(2) A final agency determination shall include notice of the right to appeal such determination only to the office of administrative hearings. Within 30 days after service of a final agency determination and the notice of right to appeal, the appellant may file a request for hearing in writing with the office of administrative hearings for a review of that determination. Any request for hearing must be accompanied by a copy of the final agency determination. Failure to timely request a hearing constitutes a waiver of the right to any review. The request shall be examined by the presiding officer assigned. If the appellant seeks to challenge the final agency determination on any grounds other than material facts in controversy or agency violation of a relevant rule, regulation or statute, the appellant shall express such allegations with particularity within the request for hearing. If it plainly appears from the face of the request and accompanying final agency determination that the appellant failed to state a claim on which relief could be granted, the request shall be dismissed. The burden shall be on the appellant to prove by a preponderance of the evidence that the agency action violated a specific rule, regulation or statute. If the request for hearing does not allege a violation of a specific rule, regulation or statute, the burden shall be on the appellant to prove by a preponderance of the evidence that the agency had no legitimate government interest in taking such action. Any dispositive ruling of the hearing officer assigned by the office of administrative hearings shall be deemed an initial order under the Kansas administrative procedure act.

(3) The person shall participate by telephone or other electronic means at any hearing before the office of administrative hearings or any proceeding under the Kansas judicial review act, unless the presiding officer or court determines that the interests of justice require an in-person proceeding. Notwithstanding K.S.A. 77-609, and amendments thereto, if an in-person proceeding is necessary, such proceeding shall be conducted at the place where the person is committed.

(4) Except as otherwise provided in the Kansas sexually violent predator act and notwithstanding K.S.A. 77-609, and amendments thereto, venue shall be in Pawnee county, Kansas, for all proceedings brought pursuant to the Kansas judicial review act.

Sec. 12. K.S.A. 2014 Supp. 59-29a23 is hereby amended to read as follows: 59-29a23. (a) Whenever a person civilly committed pursuant to ~~K.S.A. 59-29a01 et seq. and amendments thereto,~~ files a petition pursuant to ~~K.S.A. 60-1501 et seq. and amendments thereto,~~ the Kansas sexually violent predator act files any civil action relating to such commitment, including, but not limited to, an action pursuant to K.S.A. 60-1501 et seq., and amendments thereto, the costs incurred, including, but not limited to, the filing fee, costs of appointed counsel fees and expenses, witness fees and expenses, expert fees and expenses and other expenses related to the prosecution and defense of such petition, shall be taxed to the county responsible for the costs civilly committed person bringing the action. ~~Any district court receiving a statement of costs from another district court shall forthwith approve the same for payment out of the general fund of its county except that it may refuse to approve the same for payment only on the ground that it is not the county responsible for the costs. If the claim for costs is not paid within 120 days, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county.~~

(b) (1) Subject to subsection (c), any court may authorize the commencement of any civil action, or appeal therein, without prepayment of fees or security therefor, by a civilly committed person who submits an affidavit that includes a statement of all assets that such person possesses and a statement that such person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the civil action or appeal and the affiant's belief that the person is entitled to redress.

(2) A civilly committed person seeking to bring a civil action, or appeal therein, without prepayment of fees or security therefor, in addition to filing the affidavit required by subsection (b)(1), shall submit a certified copy of the trust fund account statement, or institutional equivalent, for such person for the six-month period immediately preceding the filing of the action or notice of appeal, obtained from the appropriate official of each facility at which such person is or was committed. In addition, such person shall submit a certified copy of all private banking account and

investment account statements for the six-month period immediately preceding the filing of the action or notice of appeal for which the person is the account owner or beneficiary.

(3) *If the court determines, based on the affidavit and information provided pursuant to this subsection, that the person is indigent, the costs incurred shall be taxed to the county responsible for the costs.*

(4) *Any district court receiving a statement of costs from another district court shall forthwith approve the same for payment out of the general fund of its county, except that it may refuse to approve the same for payment only on the ground that it is not the county responsible for the costs. If the claim for costs is not paid within 120 days, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county.*

(5) *The county responsible for the costs incurred pursuant to this subsection—(a) shall be reimbursed for such costs by the office of the attorney general from the sexually violent predator expense fund. The attorney general shall develop and implement a procedure to provide such reimbursements. If there are no moneys available in such fund to pay any such reimbursements, the county may file a claim against the state pursuant to article 9 of chapter 46, of the Kansas Statutes Annotated, and amendments thereto.*

(6) *An appeal may not be taken in forma pauperis if the trial court certifies in writing that such appeal is not taken in good faith.*

(c) (1) *Notwithstanding subsection (b), if a civilly committed person brings a civil action or files an appeal in forma pauperis, such person shall be required to pay the full amount of a filing fee. The court shall assess and, when funds exist, collect as a partial payment of any court fees required by law, an initial partial filing fee of 20% of the greater of:*

(A) *The average monthly deposits to the civilly committed person's trust account, or institutional equivalent; or*

(B) *the average monthly balance in the civilly committed person's trust account, or institutional equivalent, for the six-month period immediately preceding the filing of the action or notice of appeal.*

(2) *After payment of the initial partial filing fee, the civilly committed person shall be required to make monthly payments of 20% of the preceding month's income credited to the civilly committed person's account. The agency having custody of the civilly committed person shall forward payments from the civilly committed person's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid. The clerk shall then forward the payments to the county responsible for the costs for reimbursement.*

(3) *In no event shall the filing fee collected exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action.*

(4) *In no event shall a civilly committed person be prohibited from bringing a civil action or appealing a civil action for the reason that such person has no assets and no means by which to pay the initial partial filing fee.*

(d) *Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:*

(1) *The allegation of poverty is untrue; or*

(2) *the action or appeal:*

(A) *Is frivolous or malicious;*

(B) *fails to state a claim on which relief may be granted; or*

(C) *seeks monetary relief against a defendant who is immune from such relief.*

(e) (1) *Judgment may be rendered for costs at the conclusion of the suit or action as in other proceedings.*

(2) (A) *If the judgment against a civilly committed person includes the payment of costs under this subsection, such person shall be required to pay the full amount of the costs ordered.*

(B) *The civilly committed person shall be required to make payments for costs under this subsection in the same manner provided for filing fees under subsection (c).*

(C) *In no event shall the costs collected exceed the amount of the costs ordered by the court.*

(f) *In no event shall a civilly committed person bring a civil action or*

appeal a judgment in a civil action or proceeding in forma pauperis if such person has, on three or more prior occasions, while confined in any facility, brought an action or appeal in a court of the state of Kansas or of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted, unless such person is under imminent danger of serious physical injury.

~~(e)-(g)~~ As used in this section, “county responsible for the costs” means the county where the person was determined to be a sexually violent predator pursuant to ~~K.S.A. 59-29a01 et seq. and amendments thereto~~ *the Kansas sexually violent predator act.*

Sec. 13. K.S.A. 2014 Supp. 59-29a24 is hereby amended to read as follows: 59-29a24. ~~(a) Any patient in the custody of the secretary of social and rehabilitation services~~ *person civilly committed* pursuant to ~~K.S.A. 59-29a01 et seq. and amendments thereto~~ *the Kansas sexually violent predator act*, prior to filing any civil action, including, but not limited to, an action pursuant to K.S.A. 60-1501 et seq., and amendments thereto, naming as the defendant pursuant to the rules of civil procedure, the state of Kansas, any political subdivision of the state of Kansas, any public official, the secretary of social and rehabilitation for aging and disability services or an employee of the *Kansas* department of social and rehabilitation for aging and disability services, while such employee is engaged in the performance of such employee’s duty, shall be required to have exhausted such patient’s *all* administrative remedies, established by procedures adopted pursuant to subsection (d) of K.S.A. 59-29a22 and amendments thereto, concerning such civil action. Upon filing a petition in a civil action, such ~~patient~~ *person* shall file with such petition proof that *the all* administrative remedies have been exhausted.

~~(b) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that:~~

~~(1) The allegation of poverty is untrue, notwithstanding the fact that a filing fee, or any portion thereof has been paid, or~~

~~(2) the action or appeal:~~

~~(A) Is frivolous or malicious;~~

~~(B) fails to state a claim on which relief may be granted, or~~

~~(C) seeks monetary relief against a defendant who is immune from such relief.~~

~~(c) In no event shall such patient bring a civil action or appeal a judgment in a civil action or proceeding under this section if such patient has, on three or more prior occasions, while in the custody of the secretary of social and rehabilitation services pursuant to K.S.A. 59-29a01 et seq., and amendments thereto, brought an action or appeal in a court of the state of Kansas or of the United States that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted, unless the patient is under imminent danger of serious physical injury.~~

~~(d) The provisions of this section shall not apply to a writ of habeas corpus.~~

Sec. 14. K.S.A. 2014 Supp. 59-2401a is hereby amended to read as follows: 59-2401a. (a) An appeal by an interested party from a district magistrate judge who is not regularly admitted to practice law in Kansas to a district judge may be taken no later than 14 days from any final order, judgment or decree entered in any proceeding pursuant to:

(1) The Kansas adoption and relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto;

(2) the care and treatment act for mentally ill persons, K.S.A. 59-2945 et seq., and amendments thereto;

(3) the care and treatment act for persons with an alcohol or substance abuse problem, K.S.A. 59-29b45 et seq., and amendments thereto; or

(4) the act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto.

The appeal shall be heard no later than 30 days from the date the notice of appeal is filed. If no record was made of the proceedings, the trial shall be de novo. Except as provided further, if a record was made of the proceedings, the district judge shall conduct the appeal on the record.

Upon motion of any party to the proceedings, the district judge may hold a trial de novo.

(b) An appeal by an interested party from a district judge, or a district magistrate judge who is regularly admitted to practice law in Kansas, to an appellate court shall be taken pursuant to article 21 of chapter 60 of the Kansas Statutes Annotated, and amendments thereto, from any final order, judgment or decree entered in any proceeding pursuant to:

(1) The Kansas adoption and relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto;

(2) the care and treatment act for mentally ill persons, K.S.A. 59-2945 et seq., and amendments thereto;

(3) the *Kansas* sexually violent predator act, K.S.A. 59-29a01 et seq., and amendments thereto;

(4) the care and treatment act for persons with an alcohol or substance abuse problem, K.S.A. 59-29b45 et seq., and amendments thereto; or

(5) the act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto.

Except for *appeals under the Kansas judicial review act* and cases otherwise specifically provided for by law, appeals under this section shall have priority over all others.

(c) Pending the determination of an appeal pursuant to subsection (a) or (b), any order appealed from shall continue in force unless modified by temporary orders entered by the court hearing the appeal. The supersedeas bond provided for in K.S.A. 60-2103, and amendments thereto, shall not stay proceedings under an appeal from the district court to an appellate court.

(d) In an appeal taken pursuant to subsection (a) or (b), the court from which the appeal is taken may require an appropriate party, other than the state of Kansas, any subdivision thereof, and all cities and counties in this state, to file a bond in such sum and with such sureties as may be fixed and approved by the court to ensure that the appeal will be prosecuted without unnecessary delay and to ensure the payment of all judgments and any sums, damages and costs that may be adjudged against that party.

(e) As used in this section, “interested party” means:

(1) The parent in a proceeding pursuant to the Kansas adoption and relinquishment act, K.S.A. 59-2111 et seq., and amendments thereto;

(2) the patient under the care and treatment act for mentally ill persons, K.S.A. 59-2945 et seq., and amendments thereto;

(3) the patient under the care and treatment act for persons with an alcohol or substance abuse problem, K.S.A. 59-29b45 et seq., and amendments thereto;

(4) the person adjudicated a sexually violent predator under the *Kansas* sexually violent predator act, K.S.A. 59-29a01 et seq., and amendments thereto;

(5) the ward or conservatee under the act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto;

(6) the parent of a minor person adjudicated a ward or conservatee under the act for obtaining a guardian or conservator, or both, K.S.A. 59-3050 et seq., and amendments thereto;

(7) the petitioner in the case on appeal; and

(8) any other person granted interested party status by the court from which the appeal is being taken.

(f) This section shall be part of and supplemental to the Kansas probate code.

Sec. 15. K.S.A. 2014 Supp. 77-603 is hereby amended to read as follows: 77-603. (a) This act applies to all agencies and all proceedings for judicial review and civil enforcement of agency actions not specifically exempted by statute from the provisions of this act.

(b) This act creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes.

(c) This act does not apply to agency actions:

(1) Of the prisoner review board concerning inmates or persons under parole or conditional release supervision;

- (2) concerning the management, discipline or release of persons in the custody of the secretary of corrections;
- (3) concerning the management, discipline or release of persons in the custody of the commissioner of juvenile justice;
- (4) under the election laws contained in chapter 25 of the Kansas Statutes Annotated, and amendments thereto, except as provided by K.S.A. 25-4185, and amendments thereto;
- (5) concerning pardon, commutation of sentence, clemency or extradition;
- (6) concerning military or naval affairs other than actions relating to armories;
- (7) governed by the provisions of the open records act and subject to an action for enforcement pursuant to K.S.A. 45-222, and amendments thereto; *or*
- (8) governed by the provisions of K.S.A. 75-4317 et seq., and amendments thereto, relating to open public meetings, and subject to an action for civil penalties or enforcement pursuant to K.S.A. 75-4320 or 75-4320a, and amendments thereto; ~~or~~
- ~~(9) concerning the civil commitment of sexually violent predators pursuant to K.S.A. 59-29a01 et seq. and amendments thereto.~~

New Sec. 16. (a) Whenever there is current evidence since the last annual examination from an expert or professional person that an identified physiological change to the committed person, such as paralysis, stroke or dementia, renders the committed person unable to commit a sexually violent offense and that this change is permanent, the person may petition the court for a hearing to be released.

(b) If the court finds after a hearing that the person has demonstrated by clear and convincing evidence that the person suffers from a permanent physiological change rendering the person unable to commit a sexually violent offense, the court shall discharge the person from the program and notify the secretary. At the hearing, the person shall have the right to counsel. The state shall have the right to have the person examined before the hearing. The burden of proof shall be on the person to prove the physiological change is permanent and renders the person unable to commit a sexually violent offense.

(c) If the court finds the person has not suffered a permanent physiological change or is not safe, the person shall remain in secure commitment.

(d) This section shall be a part of and supplemental to the Kansas sexually violent predator act.

New Sec. 17. (a) The cost of any post-commitment hearings, annual review hearings, including those provided by the office of administrative hearings, evaluations or other expenses expressly provided for in the Kansas sexually violent predator act shall be paid by the county responsible for the costs.

(b) The cost of any sexual predator treatment program administrative hearings involving K.S.A. 2014 Supp. 59-29a22, and amendments thereto, or other program decisions appealed to or received by the office of administrative hearings shall be paid by the county responsible for the costs.

(c) At the conclusion of any of the proceedings described in this section, the office of administrative hearings shall provide a statement to the county responsible for the costs. The county shall pay the office of administrative hearings within 60 days following the receipt of the bill or prior to the expiration of the fiscal year in which the costs were incurred, whichever occurs first.

(d) As used in this section, “county responsible for the costs” means the county where the person was determined to be a sexually violent predator pursuant to the Kansas sexually violent predator act.

(e) This section shall be a part of and supplemental to the Kansas sexually violent predator act.

New Sec. 18. (a) (1) Whenever a person civilly committed pursuant to K.S.A. 59-29a07, and amendments thereto, is in the custody of a county law enforcement agency for a pending criminal proceeding, the costs incurred for the care and custody of such person by the county with custody of such person, including, but not limited to, reasonable costs of medical care and treatment, housing, food and transportation, shall be paid by such county.

(2) The secretary for aging and disability services shall reimburse such county from the Larned state hospital — SPTP new crimes reimbursement account of the state general fund for all costs that would have been paid from such account if such person had remained in the custody of the secretary for aging and disability services.

(b) (1) Whenever a person civilly committed pursuant to K.S.A. 59-29a07, and amendments thereto, commits a crime and is prosecuted for such crime, the costs incurred for such prosecution shall be paid by the county where such prosecution occurs.

(2) The secretary for aging and disability services shall reimburse such county from the Larned state hospital — SPTP new crimes reimbursement account of the state general fund for all reasonable costs incurred for such prosecution.

(c) If there are no moneys available in the Larned state hospital — SPTP new crimes reimbursement account of the state general fund to pay any reimbursements described in subsection (a) or (b), the county entitled to such reimbursement may file a claim against the state pursuant to article 9 of chapter 46 of the Kansas Statutes Annotated, and amendments thereto.

(d) The secretary for aging and disability services shall develop and implement a procedure to provide the reimbursements described in subsections (a) and (b) on or before January 1, 2016.

(e) All expenditures pursuant to this section from the Larned state hospital — SPTP new crimes reimbursement account of the state general fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for aging and disability services or the secretary's designee.

Sec. 19. K.S.A. 59-29a01, 59-29a03, 59-29a10 and 59-29a18 and K.S.A. 2014 Supp. 59-2401a, 59-29a04, 59-29a04a, 59-29a05, 59-29a06, 59-29a07, 59-29a08, 59-29a11, 59-29a22, 59-29a23, 59-29a24 and 77-603 are hereby repealed.

Sec. 20. 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 SENATE, and passed that body

SENATE adopted

Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

HOUSE adopted

Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.