

SENATE BILL No. 266

AN ACT concerning the Kansas sexually violent predator act; relating to persons in the custody of the secretary for aging and disability services; administrative confinement; amending K.S.A. 2017 Supp. 59-29a02, 59-29a07, 59-29a08, 59-29a11, 59-29a19 and 59-29a22 and repealing the existing sections.

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

Section 1. K.S.A. 2017 Supp. 59-29a02 is hereby amended to read as follows: 59-29a02. As used in this act:

(a) "Sexually violent predator" means any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in repeat acts of sexual violence *and who has serious difficulty in controlling such person's dangerous behavior.*

(b) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others.

(c) "Likely to engage in repeat acts of sexual violence" means the person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others.

(d) "Sexually motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of the defendant's sexual gratification.

(e) "Sexually violent offense" means:

(1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A. 2017 Supp. 21-5503, and amendments thereto;

(2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2017 Supp. 21-5506(a), and amendments thereto;

(3) aggravated indecent liberties with a child, as defined in K.S.A. 21-3504, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5506(b), and amendments thereto;

(4) criminal sodomy, as defined in ~~subsection (a)(2) and (a)(3)~~ of K.S.A. 21-3505(a)(2) and (a)(3), prior to its repeal, or ~~subsection (a)(3) and (a)(4)~~ of K.S.A. 2017 Supp. 21-5504(a)(3) and (a)(4), and amendments thereto;

(5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5504(b), and amendments thereto;

(6) indecent solicitation of a child, as defined in K.S.A. 21-3510, prior to its repeal, or ~~subsection (a)~~ of K.S.A. 2017 Supp. 21-5508(a), and amendments thereto;

(7) aggravated indecent solicitation of a child, as defined in K.S.A. 21-3511, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5508(b), and amendments thereto;

(8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior to its repeal, or K.S.A. 2017 Supp. 21-5510, and amendments thereto;

(9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5505(b), and amendments thereto;

(10) aggravated incest, as defined in K.S.A. 21-3603, prior to its repeal, or ~~subsection (b)~~ of K.S.A. 2017 Supp. 21-5604(b), and amendments thereto;

(11) any conviction for a felony offense in effect at any time prior to the effective date of this act, that is comparable to a sexually violent offense as defined in ~~subparagraphs~~ paragraphs (1) through (11) or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this section;

(12) an attempt, conspiracy or criminal solicitation, as defined in K.S.A. 21-3301, 21-3302 and 21-3303, prior to their repeal, or K.S.A. 2017 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto, of a sexually violent offense as defined in this subsection; or

(13) any act which either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this act, has been determined beyond a reasonable doubt to have been sexually motivated.

(f) "Agency with jurisdiction" means that agency which releases upon lawful order or authority a person serving a sentence or term of confine-

ment and includes the department of corrections, the Kansas department for aging and disability services and the prisoner review board.

(g) “Person” means an individual who is a potential or actual subject of proceedings under this act.

(h) “Treatment staff” means the persons, agencies or firms employed by or contracted with the secretary to provide treatment, supervision or other services at the sexually violent predator facility.

(i) “Transitional release” means any halfway house, work release, sexually violent predator treatment facility or other placement designed to assist the person’s adjustment and reintegration into the community ~~once released from commitment~~.

(j) “Secretary” means the secretary for aging and disability services.

(k) “Conditional release” means approved placement in the community for a minimum of five years while under the supervision of the person’s court of original commitment and monitored by the secretary for aging and disability services.

(l) “Conditional release monitor” means an individual appointed by the court to monitor the person’s compliance with the treatment plan while placed on conditional release and who reports to the court. Such monitor shall not be a court services officer.

(m) “Progress review panel” means individuals appointed by the secretary for aging and disability services to evaluate a person’s progress in the sexually violent predator treatment program.

Sec. 2. K.S.A. 2017 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 the Kansas sexually violent predator act shall be kept in a secure facility and such persons shall be segregated 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 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 ~~secure confinement restriction shall not apply to any reintegration, transitional release or conditional release 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 the Kansas sexually violent predator act shall be taken into custody by any law enforcement officer as defined in K.S.A. 2017 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 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 pro-

visions 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 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. 3. K.S.A. 2017 Supp. 59-29a08 is hereby amended to read as follows: 59-29a08. (a) Each person committed under 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 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 the Kansas sexually violent predator act. The court shall file the notice and the report upon receipt *and forward the file-stamped copy to the attorney general. The attorney general shall forward a file-stamped copy of the annual written notice and annual report to the secretary upon receipt.*

(b) The person must file a request for an annual review hearing within 45 days after the date the court files the annual written notice. Failure to request a hearing within 45 days pursuant to this subsection waives the person's right to a hearing until the next annual report is filed by the court. A contested annual review hearing for transitional release shall consist of consideration about whether the person is entitled to transitional release. Only a person in transitional release shall be permitted to petition for conditional release. Only a person in conditional release shall be permitted to petition for final discharge *after a minimum of five years has passed in which the person has been free of violations of conditions of such person's treatment plan, as provided in K.S.A. 59-29a19(e), and amendments thereto.*

(c) The person may retain, or if the person is indigent and so requests the court may appoint, an examiner pursuant to K.S.A. 60-235, and amendments thereto, and the examiner shall have access to all available records concerning the person. If the person is indigent and makes a request for an examiner, the court shall determine whether the services

are necessary and shall determine the reasonable compensation for such services. The court, before appointing an examiner, shall consider factors including the person's compliance with institutional requirements and the person's participation in treatment to determine whether the person's progress justifies the costs of an examination. The appointment of an examiner is discretionary.

(d) At the annual review hearing, the burden of proof shall be upon the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in transitional release. The report, or a copy thereof, of the findings of a qualified expert shall be admissible into evidence in the annual review hearing in the same manner and with the same force and effect as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person is presumed to be unable to show probable cause to believe the person is safe to be released.

(e) The person shall have a right to have an attorney represent the person at the annual review hearing to determine probable cause, but the person is not entitled to be present at the hearing.

(f) If the person does not file a petition requesting a hearing pursuant to subsection (b), the court that committed the person under the Kansas sexually violent predator act shall then conduct an in camera annual review of the status of the person's mental condition and determine whether the person's mental abnormality or personality disorder has significantly changed so that an annual review hearing is warranted. The court shall enter an order reflecting its determination.

(g) 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 significantly changed so that the person is safe to be placed in transitional release, then the court shall set a hearing for transitional release on the issue. The person shall be entitled to be present and entitled to the assistance of counsel. The attorney general shall represent the state and shall have a right to have the person evaluated by experts chosen by the state. The 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 the hearing for transitional release shall be upon the state to prove beyond a reasonable doubt that the 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 repeat acts of sexual violence.

(h) If, after the hearing for transitional release, the court 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.

(i) 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.

(j) 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.

(k) 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.

(l) For the purposes of this section, if the person is indigent and without counsel, the court shall appoint counsel to assist such person.

Sec. 4. K.S.A. 2017 Supp. 59-29a11 is hereby amended to read as follows: 59-29a11. (a) 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 person's petition was frivolous or that the person's condition had not 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 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 July 1, 2015, the secretary for aging and disability services shall place no more than 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. 5. K.S.A. 2017 Supp. 59-29a19 is hereby amended to read as follows: 59-29a19. (a) If the court determines that the person should be placed on conditional release, the court, based upon the recommendation of the treatment staff *and progress review panel*, shall establish a plan of treatment which the person shall be ordered to follow. This plan of treatment may include, but shall not be limited to: Provisions as to where the person shall reside and with whom, taking prescribed medications, attending individual and group counseling *and any other type of treatment*, maintaining employment, having no contact with children, ~~not frequenting facilities, locations, events or otherwise in which children are likely to be present and not engaging in activities in which contact with children is likely having no direct contact with individuals that match the person's victim template, travel restrictions, searches, home visits, substance abuse~~

testing and registration requirements. Upon a showing by the person that the person accepts the plan of treatment and is prepared to follow it, the court shall release the person from the transitional release program.

(b) ~~After a minimum of five years have passed in which the person has been free of violations of conditions of such person's treatment plan, the treatment staff, or other professionals directed by the court may examine such person to determine if the person's mental abnormality or personality disorder has changed so as to warrant such person being considered for final discharge. The person preparing the report shall forward the report to the court. The court shall review the same. If the court 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 entitled to final discharge, the court shall set a formal hearing on the issue. The attorney general shall have the burden of proof to show beyond a reasonable doubt that the person's mental abnormality or personality disorder remains such that such person is not appropriate for final discharge. The person shall have the same rights as enumerated in K.S.A. 59-29a06, and amendments thereto. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary.~~

(c) ~~If, after a hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for final discharge, the court shall continue custody of the person with the secretary for placement in a secure facility, transitional release program or conditional release program. Otherwise, the court shall order the person finally discharged. In the event the court does not order final discharge of the person, the person still retains the right to annual reviews.~~

(d) ~~At any time during which the person is on conditional release and the professional person designated by the court in the treatment plan to monitor the person's compliance with it determines that the person has violated any material condition of that plan, that professional person may request the district court to issue an emergency ex parte order directing any law enforcement officers 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 copy form delivered to the court 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.~~

(e) ~~Upon the person being returned to the secure commitment facility from conditional release, 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 conditional 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, to the transitional release program or to conditional release, and may order such other further conditions with which the person must comply if the person is returned to either the transitional release program or to conditional release.~~

(b) *The conditional release monitor shall monitor the person's compliance with the plan of treatment ordered by the court while on conditional release. The conditional release monitor shall report the person's progress on conditional release to the court. At any time during which the person is on conditional release and the conditional release monitor determines that the person has violated any material condition of the plan, the conditional release monitor 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 shall be made by sworn affidavit setting forth with specificity the grounds for the entry of such emergency ex parte order provided to the court by personal deliver, telefacsimile communication or electronic means prior to the entry of such order and notice of such request shall be given to the person's counsel, or if the person is unrepresented, to the person.*

(c) *A current examination of the person's mental condition shall be*

made in accordance with K.S.A. 59-29a08, and amendments thereto, and submitted to the court and the secretary once each year.

(d) Upon the person being returned to the secure commitment facility from conditional release, notice 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 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 conditional 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, to transitional release, or to conditional release, and may order such other further conditions with which the person must comply if the person is returned to either transitional release or conditional release.

(e) After a minimum of five years has passed in which the person has been free of violations of conditions of such person's treatment plan, the treatment staff, or other treatment providers directed by the court, may examine such person to determine if the person's mental abnormality or personality disorder has significantly changed so as to warrant such person being considered for final discharge. The individual preparing the report shall forward the report to the court. The court shall review the same. If the court 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 entitled to final discharge, the court shall set a formal hearing on the issue. The attorney general shall have the burden of proof to show beyond a reasonable doubt that the person's mental abnormality or personality disorder remains such that such person is not appropriate for final discharge. The person shall have the same rights as enumerated in K.S.A. 59-29a06, and amendments thereto. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary.

(f) If, after a hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for final discharge, the court shall continue custody of the person with the secretary for placement in a secure facility, or on transitional or conditional release. Otherwise, the court shall order the person finally discharged. In the event the court does not order final discharge of the person, the person still retains the right to annual reviews.

~~(f)~~(g) The final discharge shall not prevent the person from being prosecuted for any criminal acts which the person is alleged to have committed or from being subject in the future to a subsequent commitment under this act.

Sec. 6. K.S.A. 2017 Supp. 59-29a22 is hereby amended to read as follows: 59-29a22. (a) As used in this section:

(1) "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 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 person for the purpose of preventing the person from causing injury to self or others.

(3) "Seclusion" means the placement of a person, alone, in a room, where the person's freedom to leave is restricted and where the 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 person shall have the following statutory rights:

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

(2) To refuse to perform labor which is of financial benefit to the facility in which the 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. 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 labor is an integrated part of the person's treatment plan;

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

(C) the 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 180 days.

(3) To receive adequate treatment appropriate for such person's condition.

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

(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.

(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 person's treatment program.

(B) 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) To be subjected to restraint, seclusion, emergency lockdown, individual person management plan, or any combination thereof, only as provided in this subsection.

(A) Restraints, seclusion, or both, may be used in the following circumstances:

(i) If it is determined by medical staff to be necessary to prevent immediate substantial bodily injury to the person or others and that other alternative methods to prevent such injury are not sufficient to accomplish this purpose. When used, the extent of the restraint or seclusion applied to the person shall be the least restrictive measure necessary to prevent such injury to the 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 person's condition at a frequency determined by the treating physician or licensed psychologist, which shall be no less than once per each 30 minutes. The superintendent of the treatment facility or a physician or licensed psychologist shall sign a statement explaining the treat-

ment necessity for the use of any restraint or seclusion and shall make such statement a part of the permanent treatment record of the 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) Emergency lockdown may be used in the following circumstances:

(i) 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, to prevent or control a riot or the taking of a hostage or for the discovery of contraband or a unit-wide search. An emergency lockdown order may be authorized only by the superintendent of the facility 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 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.

(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 for the behavioral management in situations including, but not limited to:~~

(a) ~~Dealing~~ with an escape or attempted escape;

(b) 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;

(c) ~~to prevent preventing or control controlling~~ a riot ~~or~~;

(d) the taking of a hostage ~~or~~;

(e) ~~the disruption of the therapeutic environment on the unit; or~~

(f) 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) 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 person or the written consent of a parent or legal guardian, if such 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) To individual religious worship within the facility if the 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 persons on a nondiscriminatory basis. No individual may be coerced into engaging in any religious activities.

(9) 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) To confidentiality of all treatment records and, as permitted by other applicable state or federal laws, to inspect and, 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, to not be filmed or taped, unless the person signs an informed and voluntary consent that specifically authorizes a named individual or group to film or tape the person for a particular purpose or project during a specified time period. The person may specify in such consent periods during which, or situations in which, the person may not be filmed or taped. If a person is legally incompetent, such consent shall be granted on behalf of the person by the person's guardian. A person may be filmed or taped for security purposes without the person's consent.

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

(14) To send 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. A person who is indigent may have reasonable access to letter-writing materials.

(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.

(A) An officer or employee of the facility at which the person is placed may delay delivery of the mail to the 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. 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.

(B) The superintendent of the facility or the superintendent's designee may, in accordance with the standards and the procedure under subsection (c), 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 person or 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) To wear and use such person's own clothing and 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.

(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 storage space 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) To see a reasonable number of visitors who do not pose a threat to the safety and security or therapeutic climate of the person, other persons, visitors or the facility.

(21) To present grievances under the procedures established by each facility on the person's own behalf.

(22) To spend such person's money as such 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 person's estate or a representative payee. A treatment facility may, as a part of its security procedures, use a trust account in lieu of currency that is held by a person, and may establish reasonable policies governing account transactions.

(c) (1) A person's rights under subsections (b)(15) to (b)(22) may be denied for cause by the superintendent of the facility or the superintendent's designee, or when medically or therapeutically contraindicated as documented by the person's physician, licensed psychologist or licensed master's level psychologist in the 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 person's treatment record.

(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 persons' rights guaranteed under this section.

(e) No person may intentionally retaliate or discriminate against any 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) 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, *including all documentation submitted through Larned state hospital and all agency responses*. 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, *or the appellant failed to demonstrate exhaustion*, 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

SENATE BILL No. 266—page 12

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. 7. K.S.A. 2017 Supp. 59-29a02, 59-29a07, 59-29a08, 59-29a11, 59-29a19 and 59-29a22 are hereby repealed.

Sec. 8. 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.