

HOUSE BILL No. 2779

By Committee on Judiciary

1-31

9 AN ACT concerning the civil commitment of sexually violent predators;
10 relating to transitional and conditional release; amending K.S.A. 59-
11 29a02, 59-29a07 and 59-29a11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 59-29a02 is hereby amended to read as follows: 59-
15 29a02. As used in this act:

16 (a) “Sexually violent predator” means any person who has been con-
17 victed of or charged with a sexually violent offense and who suffers from
18 a mental abnormality or personality disorder which makes the person
19 likely to engage in repeat acts of sexual violence.

20 (b) “Mental abnormality” means a congenital or acquired condition
21 affecting the emotional or volitional capacity which predisposes the per-
22 son to commit sexually violent offenses in a degree constituting such per-
23 son a menace to the health and safety of others.

24 (c) “Likely to engage in repeat acts of sexual violence” means the
25 person’s propensity to commit acts of sexual violence is of such a degree
26 as to pose a menace to the health and safety of others.

27 (d) “Sexually motivated” means that one of the purposes for which
28 the defendant committed the crime was for the purpose of the defend-
29 ant’s sexual gratification.

30 (e) “Sexually violent offense” means:

31 (1) Rape as defined in K.S.A. 21-3502 and amendments thereto;

32 (2) indecent liberties with a child as defined in K.S.A. 21-3503 and
33 amendments thereto;

34 (3) aggravated indecent liberties with a child as defined in K.S.A. 21-
35 3504 and amendments thereto;

36 (4) criminal sodomy as defined in subsection (a)(2) and (a)(3) of
37 K.S.A. 21-3505 and amendments thereto;

38 (5) aggravated criminal sodomy as defined in K.S.A. 21-3506 and
39 amendments thereto;

40 (6) indecent solicitation of a child as defined in K.S.A. 21-3510 and
41 amendments thereto;

42 (7) aggravated indecent solicitation of a child as defined in K.S.A. 21-
43 3511 and amendments thereto;

- 1 (8) sexual exploitation of a child as defined in K.S.A. 21-3516 and
2 amendments thereto;
- 3 (9) aggravated sexual battery as defined in K.S.A. 21-3518 and
4 amendments thereto;
- 5 (10) aggravated incest as defined in K.S.A. 21-3603 and amendments
6 thereto;
- 7 (11) any conviction for a felony offense in effect at any time prior to
8 the effective date of this act, that is comparable to a sexually violent
9 offense as defined in subparagraphs (1) through (11) or any federal or
10 other state conviction for a felony offense that under the laws of this state
11 would be a sexually violent offense as defined in this section;
- 12 (12) an attempt, conspiracy or criminal solicitation, as defined in
13 K.S.A. 21-3301, 21-3302 and 21-3303, and amendments thereto, of a
14 sexually violent offense as defined in this subsection; or
- 15 (13) any act which either at the time of sentencing for the offense or
16 subsequently during civil commitment proceedings pursuant to this act,
17 has been determined beyond a reasonable doubt to have been sexually
18 motivated.
- 19 (f) “Agency with jurisdiction” means that agency which releases upon
20 lawful order or authority a person serving a sentence or term of confine-
21 ment and includes the department of corrections, the department of so-
22 cial and rehabilitation services and the Kansas parole board.
- 23 (g) “Person” means an individual who is a potential or actual subject
24 of proceedings under this act.
- 25 (h) “Treatment staff” means the persons, agencies or firms employed
26 by or contracted with the secretary to provide treatment, supervision or
27 other services at the sexually violent predator facility.
- 28 (i) “Transitional release” means any halfway house, work release, *sex-*
29 *ually violent predator treatment facility* or other placement designed to
30 assist the person’s adjustment and reintegration into the community once
31 released from commitment.
- 32 (j) “Secretary” means the secretary of the department of social and
33 rehabilitation services.
- 34 Sec. 2. K.S.A. 59-29a07 is hereby amended to read as follows: 59-
35 29a07. (a) The court or jury shall determine whether, beyond a reasonable
36 doubt, the person is a sexually violent predator. If such determination
37 that the person is a sexually violent predator is made by a jury, such
38 determination shall be by unanimous verdict of such jury. Such deter-
39 mination may be appealed. If the court or jury determines that the person
40 is a sexually violent predator, the person shall be committed to the custody
41 of the secretary of social and rehabilitation services for control, care and
42 treatment until such time as the person’s mental abnormality or person-
43 ality disorder has so changed that the person is safe to be at large. Such

1 control, care and treatment shall be provided at a facility operated by the
2 department of social and rehabilitation services.

3 (b) At all times, persons committed for control, care and treatment
4 by the department of social and rehabilitation services pursuant to K.S.A.
5 59-29a01 *et seq.*, and amendments thereto, shall be kept in a secure fa-
6 cility and such persons shall be segregated at all times from any other
7 patient under the supervision of the secretary of social and rehabilitation
8 services and commencing June 1, 1995, such persons committed pursuant
9 to K.S.A. 59-29a01 *et seq.*, and amendments thereto, shall be kept in a
10 facility or building separate from any other patient under the supervision
11 of the secretary. *The provisions of this subsection shall apply to any fa-
12 cility or building utilized in any transitional release program or condi-
13 tional release program.*

14 (c) The department of social and rehabilitation services is authorized
15 to enter into an interagency agreement with the department of correc-
16 tions for the confinement of such persons. Such persons who are in the
17 confinement of the secretary of corrections pursuant to an interagency
18 agreement shall be housed and managed separately from offenders in the
19 custody of the secretary of corrections, and except for occasional instances
20 of supervised incidental contact, shall be segregated from such offenders.

21 (d) If any person while committed to the custody of the secretary
22 pursuant to K.S.A. 59-29a01 *et seq.*, and amendments thereto, shall be
23 taken into custody by any law enforcement officer as defined in K.S.A.
24 21-3110 and amendments thereto pursuant to any parole revocation pro-
25 ceeding or any arrest or conviction for a criminal offense of any nature,
26 upon the person's release from the custody of any law enforcement of-
27 ficer, the person shall be returned to the custody of the secretary for
28 further treatment pursuant to K.S.A. 59-29a01 *et seq.*, and amendments
29 thereto. During any such period of time a person is not in the actual
30 custody or supervision of the secretary, the secretary shall be excused
31 from the provisions of K.S.A. 59-29a08 and amendments thereto, with
32 regard to providing that person an annual examination, annual notice and
33 annual report to the court, except that the secretary shall give notice to
34 the court as soon as reasonably possible after the taking of the person
35 into custody that the person is no longer in treatment pursuant to K.S.A.
36 59-29a01 *et seq.*, and amendments thereto, and notice to the court when
37 the person is returned to the custody of the secretary for further
38 treatment.

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

42 (f) Upon a mistrial, the court shall direct that the person be held at
43 an appropriate secure facility, including, but not limited to, a county jail,

1 until another trial is conducted. Any subsequent trial following a mistrial
2 shall be held within 90 days of the previous trial, unless such subsequent
3 trial is continued as provided in K.S.A. 59-29a06 and amendments
4 thereto.

5 (g) If the person charged with a sexually violent offense has been
6 found incompetent to stand trial, and is about to be released pursuant to
7 K.S.A. 22-3305 and amendments thereto, and such person's commitment
8 is sought pursuant to subsection (a), the court shall first hear evidence
9 and determine whether the person did commit the act or acts charged.
10 The hearing on this issue must comply with all the procedures specified
11 in this section. In addition, the rules of evidence applicable in criminal
12 cases shall apply, and all constitutional rights available to defendants at
13 criminal trials, other than the right not to be tried while incompetent,
14 shall apply. After hearing evidence on this issue, the court shall make
15 specific findings on whether the person did commit the act or acts
16 charged, the extent to which the person's incompetence or developmental
17 disability affected the outcome of the hearing, including its effect on the
18 person's ability to consult with and assist counsel and to testify on such
19 person's own behalf, the extent to which the evidence could be recon-
20 structed without the assistance of the person and the strength of the
21 prosecution's case. If after the conclusion of the hearing on this issue, the
22 court finds, beyond a reasonable doubt, that the person did commit the
23 act or acts charged, the court shall enter a final order, appealable by the
24 person, on that issue, and may proceed to consider whether the person
25 should be committed pursuant to this section.

26 Sec. 3. K.S.A. 59-29a11 is hereby amended to read as follows: 59-
27 29a11. (a) Nothing in this act shall prohibit a person from filing a petition
28 for transitional release, conditional release or final discharge pursuant to
29 this act. However, if a person has previously filed a petition for transitional
30 release, conditional release or final discharge without the secretary of the
31 department of social and rehabilitation services approval and the court
32 determined either upon review of the petition or following a hearing, that
33 the petitioner's petition was frivolous or that the petitioner's condition
34 had not so changed that the person was safe to be at large, then the court
35 shall deny the subsequent petition unless the petition contains facts upon
36 which a court could find the condition of the petitioner had so changed
37 that a hearing was warranted. Upon receipt of a first or subsequent pe-
38 tition from committed persons without the secretary's approval, the court
39 shall endeavor whenever possible to review the petition and determine if
40 the petition is based upon frivolous grounds and if so shall deny the pe-
41 tition without a hearing.

42 (b) *No transitional release or conditional release facility or building*
43 *shall be located within 2,000 feet of a licensed child care facility, registered*

1 *family day care home, an established place of worship, any residence in*
2 *which a child under 18 years of age resides, or the real property of any*
3 *school upon which is located a structure used by a unified school district*
4 *or an accredited nonpublic school for student instruction or attendance*
5 *or extracurricular activities of pupils enrolled in kindergarten or any*
6 *grades one through 12. This subsection shall not apply to any state cor-*
7 *rectional institution or facility.*

8 *(c) Transitional release or conditional release facilities or buildings*
9 *shall be subject to all regulations applicable to other property and build-*
10 *ings located in the zone or area that are imposed by any municipality*
11 *through zoning ordinance, resolution or regulation, such municipality's*
12 *building regulatory codes, subdivision regulations or other nondiscrimi-*
13 *natory regulations.*

14 Sec. 4. K.S.A. 59-29a02, 59-29a07 and 59-29a11 are hereby
15 repealed.

16 Sec. 5. This act shall take effect and be in force from and after its
17 publication in the statute book.