

As Amended by House Committee

Session of 2021

SENATE BILL No. 102

By Committee on Judiciary

1-28

1 AN ACT concerning the Kansas sexually violent predator act; relating to
2 notice of release of a person who may be a sexually violent predator to
3 the attorney general and multidisciplinary team; time; detention during
4 proceedings; amending K.S.A. ~~2020~~ 2021 Supp. 59-29a02, 59-29a03
5 and 59-29a05 and repealing the existing sections.
6

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

8 Section 1. K.S.A. ~~2020~~ 2021 Supp. 59-29a02 is hereby amended to
9 read as follows: 59-29a02. As used in this act:

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

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

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

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

25 (e) "Sexually violent offense" means:

26 (1) Rape, as defined in K.S.A. 21-3502, prior to its repeal, or K.S.A.
27 ~~2020~~ 2021 Supp. 21-5503, and amendments thereto;

28 (2) indecent liberties with a child, as defined in K.S.A. 21-3503, prior
29 to its repeal, or K.S.A. ~~2020~~ 2021 Supp. 21-5506(a), and amendments
30 thereto;

31 (3) aggravated indecent liberties with a child, as defined in K.S.A.
32 21-3504, prior to its repeal, or K.S.A. ~~2020~~ 2021 Supp. 21-5506(b), and
33 amendments thereto;

34 (4) criminal sodomy, as defined in K.S.A. 21-3505(a)(2) and (a)(3),
35 prior to its repeal, or K.S.A. ~~2020~~ 2021 Supp. 21-5504(a)(3) and (a)(4),
36 and amendments thereto;

1 (5) aggravated criminal sodomy, as defined in K.S.A. 21-3506, prior
2 to its repeal, or K.S.A. ~~2020~~ 2021 Supp. 21-5504(b), and amendments
3 thereto;

4 (6) indecent solicitation of a child, as defined in K.S.A. 21-3510,
5 prior to its repeal, or K.S.A. ~~2020~~ 2021 Supp. 21-5508(a), and
6 amendments thereto;

7 (7) aggravated indecent solicitation of a child, as defined in K.S.A.
8 21-3511, prior to its repeal, or K.S.A. ~~2020~~ 2021 Supp. 21-5508(b), and
9 amendments thereto;

10 (8) sexual exploitation of a child, as defined in K.S.A. 21-3516, prior
11 to its repeal, or K.S.A. ~~2020~~ 2021 Supp. 21-5510, and amendments
12 thereto;

13 (9) aggravated sexual battery, as defined in K.S.A. 21-3518, prior to
14 its repeal, or K.S.A. ~~2020~~ 2021 Supp. 21-5505(b), and amendments
15 thereto;

16 (10) aggravated incest, as defined in K.S.A. 21-3603, prior to its
17 repeal, or K.S.A. ~~2020~~ 2021 Supp. 21-5604(b), and amendments thereto;

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

23 (12) an attempt, conspiracy or criminal solicitation, as defined in
24 K.S.A. 21-3301, 21-3302 and 21-3303, prior to their repeal, or K.S.A.
25 ~~2020~~ 2021 Supp. 21-5301, 21-5302 or 21-5303, and amendments thereto,
26 of a sexually violent offense as defined in this subsection; or

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

31 (f) "Agency with jurisdiction" means ~~that agency which~~ *an agency*
32 *that* releases upon lawful order or authority, a person *confined or* serving a
33 sentence ~~or term of confinement~~ and includes the department of
34 corrections, the Kansas department for aging and disability services and
35 the prisoner review board.

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

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

41 (i) "Transitional release" means any halfway house, work release,
42 sexually violent predator treatment facility or other placement designed to
43 assist the person's adjustment and reintegration into the community.

1 (j) "Secretary" means the secretary for aging and disability services.

2 (k) "Conditional release" means approved placement in the
3 community for a minimum of five years while under the supervision of the
4 person's court of original commitment and monitored by the secretary for
5 aging and disability services.

6 (l) "Conditional release monitor" means an individual appointed by
7 the court to monitor the person's compliance with the treatment plan while
8 placed on conditional release and who reports to the court. Such monitor
9 shall not be a court services officer.

10 (m) "Progress review panel" means individuals appointed by the
11 secretary for aging and disability services to evaluate a person's progress in
12 the sexually violent predator treatment program.

13 Sec. 2. K.S.A. ~~2020~~ 2021 Supp. 59-29a03 is hereby amended to read
14 as follows: 59-29a03. (a) *(1) Prior to July 1, ~~2022~~ 2023*, when it appears
15 that a person may meet the criteria of a sexually violent predator as
16 defined in K.S.A. 59-29a02, and amendments thereto, the agency with
17 jurisdiction shall give written notice of such to the attorney general and the
18 multidisciplinary team established in subsection (f). *Such notice shall be*
19 *given 90 days prior to the anticipated release of a person and includes, but*
20 *is not limited to:*

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

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

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

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

38 (2) *On and after July 1, ~~2022~~ 2023, and prior to July 1, ~~2023~~ 2024,*
39 *when it appears that a person may meet the criteria of a sexually violent*
40 *predator as defined in K.S.A. 59-29a02, and amendments thereto, the*
41 *agency with jurisdiction shall give written notice of such to the attorney*
42 *general and the multidisciplinary team established in subsection (f). Such*
43 *notice shall be given 90 days to two years prior to the anticipated release*

1 of a person and includes, but is not limited to:

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

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

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

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

17 (3) On and after July 1, ~~2023~~ 2024, when it appears that a person
18 may meet the criteria of a sexually violent predator as defined in K.S.A.
19 59-29a02, and amendments thereto, the agency with jurisdiction shall give
20 written notice of such to the attorney general and the multidisciplinary
21 team established in subsection (f). Such notice shall be given two years
22 prior to the anticipated release of a person and includes, but is not limited
23 to:

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

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

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

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

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

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

43 (2) documentation of institutional adjustment and any treatment

1 received.

2 (c) Any reports of evaluations prepared or provided pursuant to
3 subsection (b) shall demonstrate that the person evaluated was informed of
4 the following:

5 (1) The nature and purpose of the evaluation; and

6 (2) that the evaluation will not be confidential and that any statements
7 made by the person and any conclusions drawn by the evaluator may be
8 disclosed to a court, the detained person's attorney, the prosecutor and the
9 trier of fact at any proceeding conducted under the Kansas sexually violent
10 predator act.

11 (d) The permitted disclosures required to be submitted to the attorney
12 general under this section shall be deemed to be in response to the attorney
13 general's civil demand for relevant and material information to investigate
14 whether a petition shall be filed. The information provided shall be
15 specific to the purposes of the Kansas sexually violent predator act and as
16 limited in scope as reasonably practicable.

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

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

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

39 (h) The provisions of this section are not jurisdictional and failure to
40 comply with such provisions not affecting constitutional rights in no way
41 prevents the attorney general from proceeding against a person otherwise
42 subject to the provisions of the Kansas sexually violent predator act.

43 Sec. 3. K.S.A. ~~2020~~ 2021 Supp. 59-29a05 is hereby amended to read

1 as follows: 59-29a05. (a) Upon filing of a petition under K.S.A. 59-29a04,
2 and amendments thereto, the ~~judge~~ court shall determine whether probable
3 cause exists to believe that the person named in the petition is a sexually
4 violent predator. If such determination is made, the ~~judge~~ court shall:

5 (1) Direct that *the* person be taken into custody and detained in the
6 county jail until such time as a determination is made that the person is a
7 sexually violent predator subject to commitment under the Kansas sexually
8 violent predator act, *unless the person is subject to secure confinement at a*
9 *correctional facility operated by the secretary of corrections. When the*
10 *person is no longer subject to secure confinement at a correctional facility*
11 *operated by the secretary of corrections, the court shall direct that the*
12 *sheriff of the county where the petition is filed, or the sheriff's lawful*
13 *designee, transport the person to the county jail and detain the person in*
14 *the county jail until such time as a determination is made that the person*
15 *is a sexually violent predator subject to commitment under the Kansas*
16 *sexually violent predator act; and*

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

21 ~~Within 72 hours after a person is taken into custody pursuant to~~
22 ~~subsection (a), or~~ As soon as reasonably practicable or agreed upon by the
23 parties, ~~such person shall~~ *after the filing of a petition under K.S.A. 59-*
24 *29a04, and amendments thereto, the court shall order that the person*
25 *named in the petition be provided with notice of, and an opportunity to*
26 *appear in person at, a hearing to contest probable cause as to whether the*
27 ~~detained~~ person is a sexually violent predator. At this hearing the court
28 shall:

29 (1) Verify the ~~detainer's~~ *person's* identity; and

30 (2) determine whether probable cause exists to believe that the person
31 is a sexually violent predator. The state may rely upon the petition and
32 supplement the petition with additional documentary evidence or live
33 testimony.

34 (c) At the probable cause hearing as provided in subsection (b), the
35 ~~detained~~ person shall have the following rights in addition to the rights
36 previously specified:

37 (1) To be represented by counsel;

38 (2) to present evidence on such person's behalf;

39 (3) to cross-examine witnesses who testify against such person; and

40 (4) to view and copy all petitions and reports in the court file.

41 (d) If the probable cause determination is made, the court shall order
42 that the person be transferred to an appropriate secure facility, including,
43 but not limited to, a county jail, for an evaluation as to whether the person

1 is a sexually violent predator. The evaluation ordered by the court shall be
2 conducted by a person deemed to be professionally qualified to conduct
3 such an examination.

4 (e) The person conducting the evaluation ordered by the court
5 pursuant to this section shall notify the ~~detained~~ person *being evaluated* of
6 the following:

7 (1) The nature and purpose of the evaluation; and

8 (2) that the evaluation will not be confidential and that any statements
9 made by the ~~detained~~ person and any conclusions drawn by the evaluator,
10 will be disclosed to the court, the ~~detained~~ person's attorney, the prosecutor
11 and the trier of fact at any proceeding conducted under the Kansas
12 sexually violent predator act.

13 (f) *When a proceeding under the Kansas sexually violent predator act*
14 *is required to be conducted by the court and the person involved in the*
15 *proceeding remains subject to secure confinement at a correctional facility*
16 *operated by the secretary of corrections, the court may secure the person's*
17 *attendance at the proceeding by directing the sheriff of the county where*
18 *the proceeding will be held, or the sheriff's lawful designee, to take the*
19 *person into the sheriff's physical custody. The sheriff may detain such*
20 *person in the county jail for such time deemed reasonable by the sheriff*
21 *and the secretary of corrections to secure the person's attendance at the*
22 *proceeding.*

23 (g) *Nothing in this section shall be construed to give a person:*

24 (1) *The right to appear at a proceeding under the Kansas sexually*
25 *violent predator act absent a court order; or*

26 (2) *any right whatsoever in the amount of time the person is detained in*
27 *the county jail to secure the person's attendance at a proceeding under the*
28 *Kansas sexually violent predator act.*

29 Sec. 4. K.S.A. ~~2020~~ 2021 Supp. 59-29a02, 59-29a03 and 59-29a05
30 are hereby repealed.

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