

HOUSE BILL No. 2353

By Committee on Judiciary

2-8

Proposed Amendments to HB 2353 - technical
House Corrections and Juvenile Justice
Prepared by the Office of Revisor of Statutes
February 12, 2024

1 AN ACT concerning the care and treatment act for mentally ill persons;
2 increasing the time allowed for an initial continued treatment order;
3 adding criteria to determine when outpatient treatment may be ordered;
4 amending K.S.A. 59-2958, 59-2959 and 59-2969 and K.S.A. 2022
5 Supp. 59-2967 and repealing the existing sections.
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7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 59-2958 is hereby amended to read as follows: 59-
9 2958. (a) At the time the petition for the determination of whether a person
10 is a mentally ill person subject to involuntary commitment for care and
11 treatment under this act is filed, or any time thereafter prior to the trial
12 upon the petition as provided for in K.S.A. 59-2965, and amendments
13 thereto, the petitioner may request in writing that the district court issue an
14 ex parte emergency order including either or both of the following:

15 (1) An order directing any law enforcement officer to take the person
16 named in the order into custody and transport the person to a designated
17 treatment facility or other suitable place willing to receive and detain the
18 person; *or*

19 (2) an order authorizing any named treatment facility or other place to
20 detain or continue to detain the person until the further order of the court
21 or until the ex parte emergency custody order shall expire.

22 (b) No ex parte emergency custody order shall provide for the
23 detention of any person at a state psychiatric hospital unless a written
24 statement from a qualified mental health professional authorizing such
25 admission and detention at a state psychiatric hospital has been filed with
26 the court.

27 (c) No ex parte emergency custody order shall provide for the
28 detention of any person in a nonmedical facility used for the detention of
29 persons charged with or convicted of a crime.

30 (d) If no other suitable facility ~~at which~~ *where* such person may be
31 detained is willing to accept the person, then the participating mental
32 health center for that area shall provide a suitable place to detain the
33 person until the further order of the court or until the ex parte emergency
34 custody order shall expire.

35 (e) An ex parte emergency custody order issued under this section
36 shall expire at 5:00 p.m. of the ~~second~~ *third* day the district court is open

1 for the transaction of business after the date of its issuance, ~~which~~ *and the*
2 expiration date shall be stated in the order.

3 (f) The district court shall not issue successive ex parte emergency
4 custody orders.

5 (g) In lieu of issuing an ex parte emergency custody order, the court
6 may allow the person with respect to whom the request was made to
7 remain at liberty, subject to such conditions as the court may impose.

8 Sec. 2. K.S.A. 59-2959 is hereby amended to read as follows: 59-
9 2959. (a) At the time that the petition for determination of mental illness is
10 filed, or any time thereafter prior to the trial upon the petition as provided
11 for in K.S.A. 59-2965, and amendments thereto, the petitioner may request
12 in writing that the district court issue a temporary custody order. The
13 request shall state:

14 (1) The reasons why the person should be detained prior to the
15 hearing on the petition;

16 (2) whether an ex parte emergency custody order has been requested
17 or was granted; and

18 (3) the present whereabouts of the person named in the petition.

19 (b) Upon the filing of a request for a temporary custody order, the
20 court shall set the matter for a hearing ~~which~~ *that* shall be held not later
21 than the close of business of the ~~second~~ *third* day the district court is open
22 for the transaction of business after the filing of the request. The petitioner
23 and the person with respect to whom the request has been filed shall be
24 notified of the time and place of the hearing and that they shall each be
25 afforded an opportunity to appear at the hearing, to testify and to present
26 and cross-examine witnesses. If the person with respect to whom the
27 request has been filed has not yet retained or been appointed an attorney,
28 the court shall appoint an attorney for the person.

29 (c) (1) At the hearing scheduled upon the request, the person with
30 respect to whom the request has been filed shall be present unless the
31 attorney for the person requests that the person's presence be waived and
32 the court finds that the person's presence at the hearing would be injurious
33 to the person's welfare. The court shall enter in the record of the
34 proceedings the facts upon which the court has found that the presence of
35 the person at the hearing would be injurious to such person's welfare.
36 However, if the person with respect to whom the request has been filed
37 states in writing to the court or to such person's attorney that such person
38 wishes to be present at the hearing, the person's presence cannot be
39 waived.

40 (2) The hearing shall be conducted in as informal a manner as may be
41 consistent with orderly procedure and in a physical setting not likely to
42 have a harmful effect on the person with respect to whom the request has
43 been filed. All persons not necessary for the conduct of the proceedings

1 may be excluded. The court shall receive all relevant and material
2 evidence ~~which~~ *that* may be offered. The rules governing evidentiary and
3 procedural matters shall be applied to hearings under this section in a
4 manner so as to facilitate informal, efficient presentation of all relevant,
5 probative evidence and resolution of issues with due regard to the interests
6 of all parties. The facts or data upon which a duly qualified expert bases an
7 opinion or inference may be those perceived by or made known to the
8 expert at or before the hearing and if of a type reasonably relied upon by
9 experts in their particular field in forming opinions or inferences upon the
10 subject, the facts or data need not be admissible in evidence. The expert
11 may testify in terms of opinion or inference and give the expert's reasons
12 therefor without prior disclosure of the underlying facts or data unless the
13 court requires otherwise. If requested on cross-examination, the expert
14 shall disclose the underlying facts or data.

15 (3) If the petitioner is not represented by counsel, the county or
16 district attorney shall represent the petitioner, prepare all necessary papers,
17 appear at the hearing and present such evidence as the county or district
18 attorney determines to be of aid to the court in determining whether or not
19 there is probable cause to believe that the person with respect to whom the
20 request has been filed is a mentally ill person subject to involuntary
21 commitment for care and treatment under this act, and that it would be in
22 the best interests of the person to be detained until the trial upon the
23 petition.

24 (d) After the hearing, if the court determines from the evidence that:

25 (1) There is probable cause to believe that the person with respect to
26 whom the request has been filed is a mentally ill person subject to
27 involuntary commitment for care and treatment under this act, and that it is
28 in the best interests of the person to be detained until the trial upon the
29 petition, the court shall issue a temporary custody order;

30 (2) there is probable cause to believe that the person with respect to
31 whom the request has been filed is a mentally ill person subject to
32 involuntary commitment for care and treatment under this act, but that it
33 would not be in their best interests to be detained until the trial upon the
34 petition, the court may allow the person to be at liberty, subject to such
35 conditions as the court may impose; *or*

36 (3) there is not probable cause to believe that the person with respect
37 to whom the request has been filed is a mentally ill person subject to
38 involuntary commitment for care and treatment under this act, the court
39 shall terminate the proceedings and release the person.

40 (e) (1) A temporary custody order issued pursuant to this section may
41 direct any law enforcement officer or any other person designated by the
42 court to take the person named in the order into custody and transport them
43 to a designated treatment facility, and authorize the designated treatment

1 facility to detain and treat the person until the trial upon the petition.

2 (2) No temporary custody order shall provide for the detention and
3 treatment of any person at a state psychiatric hospital unless a written
4 statement from a qualified mental health professional authorizing such
5 admission and detention at a state psychiatric hospital has been filed with
6 the court.

7 (3) No temporary custody order shall provide for the detention of any
8 person in a nonmedical facility used for the detention of persons charged
9 with or convicted of a crime.

10 (4) If no other suitable facility ~~at which~~ *where* such person may be
11 detained is willing to accept the person, then the participating mental
12 health center for that area shall provide a suitable place to detain the
13 person until the further order of the court or until the trial upon the
14 petition.

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15 Sec. 3. K.S.A. ~~2022~~ Supp. 59-2967 is hereby amended to read as
16 follows: 59-2967. (a) An order for outpatient treatment may be entered by
17 the court at any time in lieu of any type of order ~~which~~ *that* would have
18 required inpatient care and treatment if the court finds that the patient is:

19 (1) (A) Likely to comply with an outpatient treatment order; and ~~that~~
20 ~~the patient will~~

21 (B) not likely *to* be a danger to the community or be likely to cause
22 harm to self or others while subject to an outpatient treatment order; *or*

23 (2) *in need of outpatient treatment to prevent a relapse or*
24 *deterioration that would likely result in:*

25 (A) *Serious bodily harm to self or others;*

26 (B) *a substantial harm to the patient's well-being;*

27 (C) *substantial damage to another person's property; or*

28 (D) *serious physical or mental debilitation in the patient.*

29 (b) No order for outpatient treatment shall be entered unless the head
30 of the outpatient treatment facility has consented to treat the patient on an
31 outpatient basis under the terms and conditions set forth by the court,
32 except that no order for outpatient treatment shall be refused by a
33 participating mental health center.

34 (c) If outpatient treatment is ordered, the order may state specific
35 conditions to be followed by the patient, but shall include the general
36 condition that the patient is required to comply with all directives and
37 treatment as required by the head of the outpatient treatment facility or the
38 head's designee. *Such directives and treatment plans shall be provided to*
39 *the court in writing within 10 business days after the order for outpatient*
40 *treatment is issued. Failure to provide such directives and treatment plans*
41 *to the court as required by this subsection is not grounds for dismissal of*
42 *the order unless the failure is made in bad faith.* The court may also make
43 such orders as are appropriate to provide for monitoring the patient's

1 progress and compliance with outpatient treatment. Within any outpatient
2 order for treatment the court shall specify the period of treatment as
3 provided for in ~~subsection (a) of K.S.A. 59-2966(a) or subsection (f) of~~
4 ~~K.S.A. 59-2969(f)~~, and amendments thereto.

5 (d) The court shall retain jurisdiction to modify or revoke the order
6 for outpatient treatment at any time on its own motion, on the motion of
7 any counsel of record or upon notice from the treatment facility of any
8 need for new conditions in the order for outpatient treatment or of material
9 noncompliance by the patient with the order for outpatient treatment.
10 However, if the venue of the matter has been transferred to another court,
11 then the court having venue of the matter shall have such jurisdiction to
12 modify or revoke the outpatient treatment order. Revocation or
13 modification of an order for outpatient treatment may be made ex parte by
14 order of the court in accordance with the provisions of subsections (e) or
15 (f).

16 (e) The treatment facility shall immediately report to the court any
17 material noncompliance by the patient with the outpatient treatment order.
18 Such notice may be verbal or by telephone but shall be followed by a
19 verified written, facsimile or electronic notice sent to the court, to counsel
20 for all parties and, as appropriate, to the head of the inpatient treatment
21 facility designated to receive the patient, by not later than 5:00 p.m. of the
22 first day the district court is open for the transaction of business after the
23 verbal or telephonic communication was made to the court. Upon receipt
24 of verbal, telephone, or verified written, facsimile or electronic notice of
25 material noncompliance, the court may enter an ex parte emergency
26 custody order providing for the immediate detention of the patient in a
27 designated inpatient treatment facility except that the court shall not order
28 the detention of the patient at a state psychiatric hospital, unless a written
29 statement from a qualified mental health professional authorizing such
30 detention at a state psychiatric hospital has been filed with the court. Any
31 ex parte emergency custody order issued by the court under this subsection
32 shall expire at 5:00 p.m. of the ~~second~~ *third* day the district court is open
33 for the transaction of business after the patient is taken into custody. The
34 court shall not enter successive ex parte emergency custody orders.

35 (f) (1) Upon the taking of a patient into custody pursuant to an ex
36 parte emergency custody order ~~revoking a previously issued order for~~
37 ~~outpatient treatment~~ and ordering the patient to involuntary inpatient care
38 the court shall set the matter for hearing not later than the close of business
39 on the ~~second~~ *third* day the court is open for business after the patient is
40 taken into custody. Notice of the hearing shall be given to the patient, the
41 patient's attorney, the patient's legal guardian, the petitioner or the county
42 or district attorney as appropriate, the head of the outpatient treatment
43 facility and the head of the inpatient treatment facility, similarly as

1 provided for in K.S.A. 59-2963, and amendments thereto.

2 (2) Upon the entry of an ex parte order modifying a previously issued
3 order for outpatient treatment, but allowing the patient to remain at liberty,
4 a copy of the order shall be served upon the patient, the patient's attorney,
5 the county or district attorney and the head of the outpatient treatment
6 facility similarly as provided for in K.S.A. 59-2963, and amendments
7 thereto. Thereafter, any party to the matter, including the petitioner, the
8 county or district attorney or the patient, may request a hearing on the
9 matter if the request is filed within five days from the date of service of the
10 ex parte order upon the patient. The court may also order such a hearing on
11 its own motion within five days from the date of service of the notice. If
12 no request or order for hearing is filed within the five-day period, the ex
13 parte order and the terms and conditions set out in the ex parte order shall
14 become the final order of the court substituting for any previously entered
15 order for outpatient treatment. If a hearing is requested, a formal written
16 request for revocation or modification of the outpatient treatment order
17 shall be filed by the county or district attorney or the petitioner and a
18 hearing shall be held thereon within 5 days after the filing of the request.

19 (g) The hearing held pursuant to subsection (f) shall be conducted in
20 the same manner as hearings provided for in K.S.A. 59-2959, and
21 amendments thereto. Upon the completion of the hearing, if the court finds
22 by clear and convincing evidence that the patient violated any condition of
23 the outpatient treatment order, the court may enter an order for inpatient
24 treatment, except that the court shall not order treatment at a state
25 psychiatric hospital unless a written statement from a qualified mental
26 health professional authorizing such treatment at a state psychiatric
27 hospital has been filed with the court, or may modify the order for
28 outpatient treatment with different terms and conditions in accordance
29 with this section.

30 (h) The outpatient treatment facility shall comply with the provisions
31 of K.S.A. 59-2969, and amendments thereto, concerning the filing of
32 written reports for each period of treatment during the time any outpatient
33 treatment order is in effect and the court shall receive and process such
34 reports in the same manner as reports received from an inpatient treatment
35 facility.

36 Sec. 4. K.S.A. 59-2969 is hereby amended to read as follows: 59-
37 2969. (a) At least 14 days prior to the end of each period of treatment, as
38 set out in the court order for such treatment, the head of the treatment
39 facility furnishing treatment to the patient shall cause to be filed with the
40 court a written report summarizing the treatment provided and the findings
41 and recommendations of the treatment facility concerning the need for
42 further treatment for the patient. Upon the filing of this written report, the
43 court shall notify the patient's attorney of record that this written report has

1 been filed. If there is no attorney of record for the patient, the court shall
2 appoint an attorney and notify such attorney that the written report has
3 been filed.

4 (b) When the attorney for the patient has received notice that the
5 treatment facility has filed with the district court its written report, the
6 attorney shall consult with the patient to determine whether the patient
7 desires a hearing. If the patient desires a hearing, the attorney shall file a
8 written request for a hearing with the district court, ~~which~~ and the request
9 shall be filed not later than the last day ending any period of treatment as
10 specified in the court's order for treatment issued pursuant to K.S.A. 59-
11 2966 or 59-2967, and amendments thereto, or the court's last entered order
12 for continued treatment issued pursuant to subsection (f). If the patient
13 does not desire a hearing, the patient's attorney shall file with the court a
14 written statement that the attorney has consulted with the patient; the
15 manner in which the attorney has consulted with the patient; that the
16 attorney has fully explained to the patient the patient's right to a hearing as
17 set out in this section and that if the patient does not request such a hearing
18 that further treatment will likely be ordered, but that having been so
19 advised the patient does not desire a hearing. Thereupon, the court may
20 renew its order for treatment and may specify the next period of treatment
21 as provided for in subsection (f). A copy of the court's order shall be given
22 to the patient, the attorney for the patient, the patient's legal guardian, the
23 petitioner or the county or district attorney, as appropriate, and to the head
24 of the treatment facility treating the patient as the court directs.

25 (c) Upon receiving a written request for a hearing, the district court
26 shall set the matter for hearing and notice of such hearing shall be given
27 similarly as provided for in K.S.A. 59-2963, and amendments thereto.
28 Notice shall also be given promptly to the head of the treatment facility
29 treating the patient. The hearing shall be held as soon as reasonably
30 practical, but in no event more than 10 days following the filing of the
31 written request for a hearing. The patient shall remain in treatment during
32 the pendency of any such hearing, unless discharged by the head of the
33 treatment facility pursuant to K.S.A. 59-2973, and amendments thereto.

34 (d) The district court having jurisdiction of any case may, on its own
35 motion or upon written request of any interested party, including the head
36 of the treatment facility where a patient is being treated, hold a hearing to
37 review the patient's status earlier than at the times set out in subsection (b)
38 ~~above~~, if the court determines that a material change of circumstances has
39 occurred necessitating an earlier hearing, however, the patient shall not be
40 entitled to have more than one review hearing within each period of
41 treatment as specified in any order for treatment, order for out-patient
42 treatment or order for continued treatment.

43 (e) The hearing shall be conducted in the same manner as hearings

1 provided for in K.S.A. 59-2965, and amendments thereto, except that the
 2 hearing shall be to the court and the patient shall not have the right to
 3 demand a jury. At the hearing it shall be the petitioner's or county or
 4 district attorney's or treatment facility's burden to show that the patient
 5 remains a mentally ill person subject to involuntary commitment for care
 6 and treatment under this act.

7 (f) Upon completion of the hearing, if the court finds by clear and
 8 convincing evidence that the patient continues to be a mentally ill person
 9 subject to involuntary commitment for care and treatment under this act,
 10 the court shall order continued treatment for a specified period of time not
 11 to exceed ~~three~~ six months for any initial order for continued treatment,
 12 nor more than six months in any subsequent order for continued treatment,
 13 at an inpatient treatment facility as provided for in K.S.A. 59-2966, and
 14 amendments thereto, or at an outpatient treatment facility if the court
 15 determines that outpatient treatment is appropriate under K.S.A. 59-2967,
 16 and amendments thereto, and a copy of the court's order shall be provided
 17 to the head of the treatment facility. If the court finds that it has not been
 18 shown by clear and convincing evidence that the patient continues to be a
 19 mentally ill person subject to involuntary commitment for care and
 20 treatment under this act, it shall release the patient. A copy of the court's
 21 order of release shall be provided to the patient, the patient's attorney, the
 22 patient's legal guardian or other person known to be interested in the care
 23 and welfare of a minor patient, and to the head of the treatment facility ~~at~~
 24 ~~which~~ where the patient had been receiving treatment.

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25 Sec. 5. K.S.A. 59-2958, 59-2959 and 59-2969 and K.S.A. ~~2022~~ Supp.
 26 59-2967 are hereby repealed.

27 Sec. 6. This act shall take effect and be in force from and after its
 28 publication in the statute book.