

## HOUSE BILL No. 2497

By Committee on Corrections and Juvenile Justice

1-20

---

1 AN ACT concerning crimes, criminal procedure and punishment; relating  
2 to competence of defendants to stand trial; repealing K.S.A. 22-3301  
3 and 22-3306 and K.S.A. 2011 Supp. 22-3302, 22-3303 and 22-3305.  
4

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

6 Section 1. (a) No defendant shall be tried for the crime charged while  
7 mentally incompetent to stand trial.

8 (b) A defendant is mentally incompetent to stand trial when such  
9 defendant, because of mental illness or defect, does not have:

10 (1) Sufficient present ability to consult with defendant's lawyer with a  
11 reasonable degree of rational understanding and otherwise assist in the  
12 defense; and

13 (2) a rational and factual understanding of the proceedings.

14 Sec. 2. As used in sections 1 through 17, and amendments thereto:

15 (a) "Competent" means mentally competent to stand trial.

16 (b) "Evaluator" means a person administering a competency  
17 evaluation.

18 (c) "Incompetent" means mentally incompetent to stand trial as  
19 defined in subsection (b) of section 1, and amendments thereto.

20 (d) "Residential facility" means a facility where a person receives  
21 inpatient treatment or evaluation.

22 (e) "Treatment" has the same meaning as defined in K.S.A. 59-2946,  
23 and amendments thereto.

24 Sec. 3. (a) The defendant, the defendant's counsel or the prosecutor  
25 may move for a competency evaluation at any time after criminal charges  
26 have been brought but prior to pronouncement of sentence whenever any  
27 such party has reason to believe such defendant is incompetent. Such  
28 motion shall set forth the reasons which form the basis of such belief.  
29 Upon a motion for a competency evaluation and for good cause shown the  
30 court shall order a competency evaluation.

31 (b) The court shall, upon its own motion, order a competency  
32 evaluation whenever the court has reason to believe such defendant is  
33 incompetent. The court shall inform all parties of the reason for its belief,  
34 and give each party an opportunity to be heard before ordering such  
35 evaluation.

36 (c) Upon an order for a competency evaluation and hearing the court

1 shall suspend the criminal proceedings and order a competency evaluation.  
2 If the defendant is in jeopardy at the time of such order the court may  
3 either order a recess or declare a mistrial.

4 Sec. 4. No evaluator shall be appointed by the court unless the court  
5 determines that such evaluator's qualifications include:

6 (a) Sufficient professional education and sufficient clinical training  
7 and experience to establish the clinical knowledge required for the specific  
8 type of evaluation being conducted; and

9 (b) sufficient forensic knowledge or experience necessary for  
10 understanding the relevant legal matter and for satisfying the specific  
11 purpose for which the evaluation is being ordered.

12 Sec. 5. The order for evaluation shall specify the nature of the  
13 evaluation to be conducted and the legal criteria of competency to be  
14 addressed by the evaluator, as described in section 1, and amendments  
15 thereto. Such evaluation shall not include an evaluation of whether the  
16 defendant, as a result of mental illness or defect, lacked the mental state  
17 required as an element of the crime.

18 Sec. 6. (a) If a defendant is in custody, the evaluation shall be  
19 concluded and a report returned to the court within 21 days of the  
20 defendant's admission to the state security hospital or residential facility,  
21 or, if the court orders the defendant to be evaluated in jail, within 21 days  
22 of such order. These time periods may be extended for good cause shown  
23 but shall not exceed 45 days.

24 (b) Except as provided in subsection (b) of section 7, and  
25 amendments thereto, to facilitate the evaluation the court may:

26 (1) Commit a defendant charged with a felony to the state security  
27 hospital or any county or private residential facility for evaluation;

28 (2) commit a defendant charged with a misdemeanor to any  
29 appropriate state, county or private residential facility for evaluation,  
30 except that the court shall not commit such defendant to the state security  
31 hospital or any other state residential facility unless, prior to such  
32 commitment, the director of a county or private residential facility  
33 recommends to the court and to the secretary of social and rehabilitation  
34 services that evaluation of such defendant should be performed at a state  
35 residential facility; or

36 (3) order the evaluation to be conducted while the defendant is in jail.

37 Sec. 7. (a) If a defendant has been granted pretrial release pursuant to  
38 K.S.A. 22-2802, and amendments thereto, the evaluation shall be  
39 concluded and a report returned to the court within 30 days of the court's  
40 order.

41 (b) Such defendant on pretrial release shall not be involuntarily  
42 confined, committed, taken into custody, denied a pretrial release hearing  
43 or denied release on an appearance bond solely because a competency

1 evaluation has been ordered, unless confinement is necessary for such  
2 evaluation or the court determines that such defendant is unlikely to  
3 submit to outpatient evaluation. Such confinement shall be for the  
4 minimum length of time necessary to complete such evaluation.

5 (c) The court may order such defendant, as a condition of pretrial  
6 release, to appear at a designated time and place for outpatient evaluation.

7 (d) The court shall have the authority to involuntarily commit, subject  
8 to the limitations of subsection (b)(1) and (b)(2) of section 6, and  
9 amendments thereto, a defendant who refuses to cooperate or to provide  
10 sufficient information to permit a determination of competence.

11 (1) Such commitment may continue for such time as is necessary to  
12 determine competence. The initial order of commitment shall be for no  
13 longer than 14 days, subject to extensions for good cause shown.

14 (2) At the expiration of 45 days the court shall hold a hearing to  
15 determine if there is a need for further commitment.

16 Sec. 8. (a) The written evaluation report shall be provided to the court  
17 and to each party. Such report shall:

18 (1) Identify the evaluator's qualifications for conducting the  
19 evaluation;

20 (2) identify the specific matters referred for evaluation;

21 (3) describe the procedures, tests, and techniques used by the  
22 evaluator;

23 (4) state the evaluator's clinical findings and opinions on each matter  
24 referred for evaluation and indicate specifically those questions, if any, that  
25 could not be answered;

26 (5) identify the sources of information and present the factual basis  
27 for the evaluator's clinical findings and opinions; and

28 (6) present the reasoning by which the evaluator utilized the  
29 information to reach the clinical findings and opinions.

30 (b) If it is determined that treatment is necessary for the defendant to  
31 attain or maintain competence, the report shall address:

32 (1) The conditions causing such incompetence;

33 (2) the treatment required for the defendant to attain or maintain  
34 competence; and

35 (3) the likelihood of the defendant's attaining competence under the  
36 treatment and the probable duration of such treatment.

37 Sec. 9. (a) Information elicited from the defendant at a competency  
38 evaluation shall be considered privileged information and shall only be  
39 used in a proceeding to determine the defendant's competence and related  
40 treatment issues. No statement made by the defendant in the course of such  
41 evaluation shall be admitted in evidence against the defendant in any  
42 criminal proceeding.

43 (b) The defendant shall waive such privilege if such defendant uses

1 such information, including but not limited to the report or any parts  
2 thereof, for any other purpose.

3 Sec. 10. (a) Any party may move to contest the findings of the  
4 evaluation report within seven days of receipt of such report. Upon  
5 motion, the court shall order a hearing to be held within seven days of the  
6 motion contesting such report.

7 (b) Before the competency hearing, upon motion of any party and for  
8 good cause shown, the court shall order the defendant to be reevaluated by  
9 a different evaluator who shall create a written report as described in  
10 section 8, and amendments thereto.

11 (c) If neither party contests, the court shall independently review the  
12 report. If the court concurs with the recommendations, the court shall enter  
13 an order accepting the report either continuing the defendant's treatment  
14 or, if the defendant is determined to be competent, resume the criminal  
15 proceedings. If the court does not concur with such report's conclusions,  
16 the court shall order a reevaluation of the defendant and shall hold a  
17 hearing on the issues addressed in such report.

18 (d) The prosecutor or defense counsel may move for reevaluation of a  
19 defendant or for rehearing by the court on the issue of the defendant's  
20 continuing incompetence at any time prior to sentencing.

21 Sec. 11. All hearings related to competence, treatment and  
22 involuntary confinement shall be tried by the court. If the defendant has  
23 been confined for examination or is in custody, such hearings shall be held  
24 within seven days of the receipt of such report. If the defendant is on  
25 pretrial release, such hearing shall be held within 30 days of receipt of  
26 such report.

27 Sec. 12. (a) (1) In all cases the defendant shall have the right to be  
28 personally present at the hearing, cross-examine witnesses, call witnesses,  
29 have compulsory process for the attendance of witnesses and an  
30 opportunity to interview the evaluator before the hearing.

31 (2) Either party may call any person designated by the evaluator as a  
32 source of information for preparation of the report as a witness, except the  
33 prosecutor, defendant or defense attorney.

34 (3) The evaluator, whether called by the court or any party, shall be a  
35 witness subject to examination.

36 (b) The court may inquire of defense counsel about the professional  
37 attorney-client relationship and the client's ability to communicate  
38 effectively with counsel. Defense counsel shall not be required to divulge  
39 the substance of confidential or privileged communications.

40 (c) Each party shall have the right to present evidence at the hearing.  
41 At the conclusion of such hearing the court shall enter a written order  
42 setting forth separately and distinctly the findings of the court on the issues  
43 of competence, treatment and, if applicable, involuntary confinement, and

1 the facts on which such determinations are based.

2 Sec. 13. (a) If the court does not find by a preponderance of the  
3 evidence that the defendant is incompetent, the criminal proceedings shall  
4 resume.

5 (b) The judge who conducted the competency hearing:

6 (1) May conduct the preliminary examination if the criminal  
7 proceedings were suspended before or during the preliminary examination;  
8 or

9 (2) may order the district magistrate judge to conduct the preliminary  
10 examination, if a district magistrate judge was conducting the criminal  
11 proceedings prior to the competency hearing.

12 (c) Upon notification of the court that a defendant committed for  
13 evaluation has been found competent, the court shall order that the  
14 defendant be returned not later than five days after receipt of the notice for  
15 proceedings under this section. If the defendant is not returned within that  
16 time, the county in which the proceedings will be held shall pay the costs  
17 of maintaining the defendant at the institution or facility for the period of  
18 time the defendant remains at such institution or facility in excess of the  
19 five-day period.

20 Sec. 14. (a) If the court finds that the defendant is incompetent or that  
21 competence depends on continuation of treatment, the court shall consider  
22 issues relating to treatment to effect competence, including but not limited to,  
23 probable duration and the likelihood of restoration to competence in the  
24 reasonably foreseeable future.

25 (b) A defendant may be ordered to undergo treatment if the court  
26 finds that the defendant is in need of such services. When the defendant is  
27 in custody the court may order:

28 (1) Treatment services be administered at the residential facility;

29 (2) the defendant's transfer to another residential facility for  
30 treatment; or

31 (3) the defendant to comply with outpatient treatment services.

32 (c) At the conclusion of the hearing the court shall enter its written  
33 order for treatment to effect competence. The order shall contain:

34 (1) Written findings of fact setting forth the findings of the court on  
35 the issues of competence, treatment and, if applicable, involuntary  
36 confinement;

37 (2) copies of supporting evaluative information sufficient for a  
38 treatment provider to ascertain the charge against the defendant and the  
39 nature of the conditions causing the incompetence; and

40 (3) the time at which reports will be required from the treatment  
41 providers.

42 Sec. 15. (a) A defendant shall not be considered incompetent solely  
43 because such defendant's competence is dependent upon continuation of

1 treatment, including, but not limited to, medication.

2 (b) A defendant shall not be prohibited from standing trial or entering a  
3 plea solely because such defendant is undergoing such treatment.

4 Sec. 16. (a) Within 21 days of the court's order committing a  
5 defendant for treatment, or ordering treatment on an outpatient basis, the  
6 evaluator shall develop and file with the court an individualized plan of  
7 treatment including the supporting data and facts used in the determination  
8 of such treatment plan.

9 (b) A person determined to be incompetent and committed for  
10 treatment or ordered to appear for outpatient treatment shall have no right  
11 to refuse ordinary and reasonable treatment designed to effect competence.  
12 At the time such treatment begins, the facility or person providing such  
13 treatment shall notify the secretary of corrections for the purpose of  
14 providing victim notification.

15 (c) The residential facility in which a defendant is committed shall  
16 notify the secretary of corrections for the purpose of providing victim  
17 notification.

18 Sec. 17. (a) A defendant's continuing incompetence shall be  
19 periodically redetermined by the court. The treatment provider shall  
20 periodically file a continuing incompetency report on the defendant's  
21 current status with the court, provide copies of such report to the  
22 prosecutor and defense counsel, and provide notice of such report to the  
23 defendant.

24 (b) Such report shall be filed at intervals not to exceed 90 days and at  
25 any time the treatment provider believes:

26 (1) Such defendant has attained competence; or

27 (2) that there is not a substantial probability that the defendant will  
28 attain competence within the foreseeable future.

29 (c) Such report shall contain:

30 (1) A reevaluation of issues contained in the initial competency  
31 report;

32 (2) a description of the treatment administered; and

33 (3) an assessment of the defendant's continued progress toward  
34 attaining competence within the reasonably foreseeable future, if such  
35 report concludes that the defendant remains incompetent to stand trial.

36 Sec. 18. (a) If the continuing incompetency report concludes that  
37 there is a substantial probability of the defendant attaining competency in  
38 the foreseeable future, the court shall order the defendant to remain in an  
39 appropriate residential facility or outpatient treatment program until the  
40 defendant attains competency or for a period of six months from the date  
41 of the original commitment, whichever occurs first.

42 (b) If the continuing incompetency report concludes that the  
43 defendant has attained competence, the court in which the criminal case is

1 pending shall conduct a hearing to determine the defendant's competence  
2 within seven days of receipt of such report. If the court finds that such  
3 defendant is no longer incompetent, the criminal proceedings shall resume.  
4 If such criminal proceedings resume the court shall give notice to the  
5 secretary of corrections for the purpose of providing victim notification.

6 (c) If such defendant has not obtained competency within six months  
7 of the date of the original commitment or the continuing incompetency  
8 report concludes that there is not a substantial probability that the  
9 defendant will attain competence within the foreseeable future, the court  
10 shall order the secretary of social and rehabilitation services to commence  
11 involuntary commitment proceedings pursuant to article 29 of chapter 59  
12 of the Kansas Statutes Annotated, and amendments thereto. The secretary  
13 shall promptly notify the court, the county or district attorney in which the  
14 criminal proceedings are pending and the secretary of corrections for the  
15 purpose of providing victim notification, of the result of the involuntary  
16 commitment proceeding.

17 (1) When a defendant is charged with any off-grid felony, any  
18 nondrug severity level 1, 2 or 3 felony or a violation of subsection (b) of  
19 K.S.A. 21-5505, subsection (b) of K.S.A. 21-5506, subsection (b) of  
20 K.S.A. 21-5508, subsection (b) of K.S.A. 21-5604 or subsection (b) of  
21 K.S.A. 21-5812, and amendments thereto, and commitment proceedings  
22 have commenced, for such involuntary commitment proceeding, "mentally  
23 ill person subject to involuntary commitment for care and treatment"  
24 means a mentally ill person, as defined in subsection (e) of K.S.A. 59-  
25 2946, and amendments thereto, who is likely to cause harm to self or  
26 others, as defined in subsection (f)(3) of K.S.A. 59-2946, and amendments  
27 thereto. The other provisions of subsection (f) of K.S.A. 59-2946, and  
28 amendments thereto, shall not apply.

29 (2) Whenever involuntary commitment proceedings have been  
30 commenced by the secretary of social and rehabilitation services as  
31 required by K.S.A. 22-3303, and amendments thereto, and the defendant is  
32 not committed to a treatment facility as a patient, the defendant shall  
33 remain in the institution where committed pursuant to K.S.A. 22-3303, and  
34 amendments thereto. The secretary of social and rehabilitation services  
35 shall promptly notify the court, the county or district attorney of the county  
36 in which the criminal proceedings are pending and the secretary of  
37 corrections for the purpose of providing victim notification, of the result of  
38 the involuntary commitment proceeding.

39 (3) If the defendant is involuntarily committed to a residential facility  
40 as a patient but thereafter is to be discharged pursuant to the care and  
41 treatment act for mentally ill persons, the defendant shall remain in the  
42 residential facility where committed and the head of the residential facility  
43 shall promptly notify the court, the county or district attorney of the county

1 in which the criminal proceedings are pending and the secretary of  
2 corrections for the purpose of providing victim notification, that the  
3 defendant is to be discharged.

4 (4) Notification to the court shall include an opinion from the head of  
5 the treatment facility as to whether or not the defendant is now competent  
6 to stand trial. Upon request of the county or district attorney and for good  
7 cause shown, the court shall set a hearing on the issue of whether or not  
8 the defendant has been restored to competency and notify the secretary of  
9 corrections of the hearing date for the purpose of victim notification. If no  
10 such request is made within 14 days after receipt of notice, the court shall  
11 order the defendant to be discharged from commitment and shall dismiss  
12 without prejudice the charges against the defendant. The period of  
13 limitation for the prosecution for the crime charged shall not continue to  
14 run until the defendant has been determined to have attained competency.  
15 The court shall notify the secretary of corrections of the discharge order  
16 for the purpose of providing victim notification.

17 (d) A defendant committed to a residential facility for evaluation or  
18 treatment to effect competency who is thereafter sentenced for the crime  
19 charged at the time of such commitment may be credited with the time  
20 such defendant spent in a residential facility.

21 Sec. 19. K.S.A. 22-3301 and 22-3306 and K.S.A. 2011 Supp. 22-  
22 3302, 22-3303 and 22-3305 are hereby repealed.

23 Sec. 20. This act shall take effect and be in force from and after its  
24 publication in the statute book.  
25