

**SENATE BILL No. 416**

By Committee on Federal and State Affairs

2-12

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. 2019 Supp. 59-29a03 and 59-29a05 and  
5 repealing the existing sections.  
6

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

8 Section 1. K.S.A. 2019 Supp. 59-29a03 is hereby amended to read as  
9 follows: 59-29a03. (a) *(1) Prior to July 1, 2021*, when it appears that a  
10 person may meet the criteria of a sexually violent predator as defined in  
11 K.S.A. 59-29a02, and amendments thereto, the agency with jurisdiction  
12 shall give written notice of such to the attorney general and the  
13 multidisciplinary team established in subsection (f); 90 days prior to:

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

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

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

26 ~~(4)~~ *(D)* release of a person who has been found not guilty of a  
27 sexually violent offense pursuant to K.S.A. 22-3428, and amendments  
28 thereto, and the jury who returned the verdict of not guilty answers in the  
29 affirmative to the special question asked pursuant to K.S.A. 22-3221, and  
30 amendments thereto.

31 *(2) On and after July 1, 2021, and prior to July 1, 2022, when it*  
32 *appears that a person may meet the criteria of a sexually violent predator*  
33 *as defined in K.S.A. 59-29a02, and amendments thereto, the agency with*  
34 *jurisdiction shall give written notice of such to the attorney general and*  
35 *the multidisciplinary team established in subsection (f) 90 days to two*  
36 *years prior to:*

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

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

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

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

16       (3) *On and after July 1, 2022, when it appears that a person may*  
17 *meet the criteria of a sexually violent predator as defined in K.S.A. 59-*  
18 *29a02, and amendments thereto, the agency with jurisdiction shall give*  
19 *written notice of such to the attorney general and the multidisciplinary*  
20 *team established in subsection (f) two years prior to:*

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

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

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

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

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

38       (1) *The person's name, identifying factors, anticipated future*  
39 *residence and offense history; and*

40       (2) *documentation of institutional adjustment and any treatment*  
41 *received.*

42       (c) *Any reports of evaluations prepared or provided pursuant to*  
43 *subsection (b) shall demonstrate that the person evaluated was informed of*

1 the following:

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

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

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

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

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

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

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

40 Sec. 2. K.S.A. 2019 Supp. 59-29a05 is hereby amended to read as  
41 follows: 59-29a05. (a) Upon filing of a petition under K.S.A. 59-29a04,  
42 and amendments thereto, the ~~judge~~ *court* shall determine whether probable  
43 cause exists to believe that the person named in the petition is a sexually

1 violent predator. If such determination is made, the ~~judge~~ court shall:

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

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

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

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

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

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

34 (1) To be represented by counsel;

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

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

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

38 (d) If the probable cause determination is made, the court shall order  
39 that the person be transferred to an appropriate secure facility, including,  
40 but not limited to, a county jail, for an evaluation as to whether the person  
41 is a sexually violent predator. The evaluation ordered by the court shall be  
42 conducted by a person deemed to be professionally qualified to conduct  
43 such an examination.

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

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

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

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

20 (g) *Nothing in this section shall be construed to give a person: (1)*  
21 *The right to appear at a proceeding under the Kansas sexually violent*  
22 *predator act absent a court order; or (2) any right whatsoever in the*  
23 *amount of time the person is detained in the county jail to secure the*  
24 *person's attendance at a proceeding under the Kansas sexually violent*  
25 *predator act.*

26 Sec. 3. K.S.A. 2019 Supp. 59-29a03 and 59-29a05 are hereby  
27 repealed.

28 Sec. 4. This act shall take effect and be in force from and after its  
29 publication in the statute book.