

HOUSE BILL No. 2095

By Committee on Judiciary

1-21

1 AN ACT concerning the care and treatment act for mentally ill persons;
2 relating to temporary custody orders; possession of a firearm;
3 amending K.S.A. 59-2959 and K.S.A. 2020 Supp. 59-2966 and
4 repealing the existing sections.
5

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

7 Section 1. K.S.A. 59-2959 is hereby amended to read as follows: 59-
8 2959. (a) At the time that the petition for determination of mental illness is
9 filed, or any time thereafter prior to the trial upon the petition as provided
10 for in K.S.A. 59-2965 and amendments thereto, the petitioner may request
11 in writing that the district court issue a temporary custody order. The
12 request shall state:

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

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

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

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

28 (c) At the hearing scheduled upon the request, the person with respect
29 to whom the request has been filed shall be present unless the attorney for
30 the person requests that the person's presence be waived and the court
31 finds that the person's presence at the hearing would be injurious to the
32 person's welfare. The court shall enter in the record of the proceedings the
33 facts upon which the court has found that the presence of the person at the
34 hearing would be injurious to such person's welfare. However, if the
35 person with respect to whom the request has been filed states in writing to
36 the court or to such person's attorney that such person wishes to be present

1 at the hearing, the person's presence cannot be waived.

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

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

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

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

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

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

1 (e) (1) A temporary custody order issued pursuant to this section may
2 direct any law enforcement officer or any other person designated by the
3 court to take the person named in the order into custody and transport them
4 to a designated treatment facility, and authorize the designated treatment
5 facility to detain and treat the person until the trial upon the petition.

6 (2) *A temporary custody order issued pursuant to this section may*
7 *prohibit the person named in the order from possessing a firearm and*
8 *require such person petition the court to reinstate the right of such person*
9 *to possess a firearm. If such a prohibition is contained in the order, the*
10 *court shall:*

11 (A) *Direct the clerk of the district court to send a copy of the order to*
12 *the Kansas bureau of investigation within five days after receipt of the*
13 *order, and the Kansas bureau of investigation shall immediately enter the*
14 *order into the national criminal information center and other appropriate*
15 *databases; and*

16 (B) *notify the person named of their right to petition the court to*
17 *reinstate the right of such person to possess a firearm.*

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

23 ~~(3)~~(4) No temporary custody order shall provide for the detention of
24 any person in a nonmedical facility used for the detention of persons
25 charged with or convicted of a crime.

26 ~~(4)~~(5) If no other suitable facility at which such person may be
27 detained is willing to accept the person, then the participating mental
28 health center for that area shall provide a suitable place to detain the
29 person until the further order of the court or until the trial upon the
30 petition.

31 Sec. 2. K.S.A. 2020 Supp. 59-2966 is hereby amended to read as
32 follows: 59-2966. (a) Upon the completion of the trial, if the court or jury
33 finds by clear and convincing evidence that the proposed patient is a
34 mentally ill person subject to involuntary commitment for care and
35 treatment under this act, the court shall order treatment for such person for
36 a specified period of time not to exceed three months from the date of the
37 trial at a treatment facility, except that the court shall not order treatment at
38 a state psychiatric hospital, unless a written statement from a qualified
39 mental health professional authorizing such treatment at a state psychiatric
40 hospital has been filed with the court. Whenever an involuntary patient is
41 ordered to receive treatment, the clerk of the district court shall send a
42 copy of the order to the Kansas bureau of investigation within five days
43 after receipt of the order. The Kansas bureau of investigation shall

1 immediately enter the order into the national criminal information center
2 and other appropriate databases. An order for treatment in a treatment
3 facility other than a state psychiatric hospital shall be conditioned upon the
4 consent of the head of that treatment facility to accepting the patient. In the
5 event no other appropriate treatment facility has agreed to provide
6 treatment for the patient, and no qualified mental health professional has
7 authorized treatment at a state psychiatric hospital, the participating mental
8 health center for the county in which the patient resides shall be given
9 responsibility for providing or securing treatment for the patient or if no
10 county of residence can be determined for the patient, then the
11 participating mental health center for the county in which the patient was
12 taken into custody or in which the petition was filed shall be given
13 responsibility for providing or securing treatment for the patient.

14 (b) A copy of the order for treatment shall be provided to the head of
15 the treatment facility.

16 (c) When the court orders treatment, it shall retain jurisdiction to
17 modify, change or terminate such order, unless venue has been changed
18 pursuant to K.S.A. 59-2971, and amendments thereto, and then the
19 receiving court shall have continuing jurisdiction.

20 (d) If the court finds from the evidence that the proposed patient has
21 not been shown to be a mentally ill person subject to involuntary
22 commitment for care and treatment under this act the court shall release
23 the person and terminate the proceedings.

24 (e) *An order issued pursuant to this section shall notify the person*
25 *named in the order of any right they may have to petition the court to*
26 *reinstate the right of such person to possess a firearm.*

27 Sec. 3. K.S.A. 59-2959 and K.S.A. 2020 Supp. 59-2966 are hereby
28 repealed.

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