

## HOUSE BILL No. 2530

By Representative M. Holmes

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1 AN ACT concerning sexually violent predators; relating to commitment  
2 procedure in a secure facility, transitional release program or  
3 conditional release program; amending K.S.A. 2011 Supp. 59-29a07  
4 and repealing the existing section.  
5

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

7 Section 1. K.S.A. 2011 Supp. 59-29a07 is hereby amended to read as  
8 follows: 59-29a07. (a) The court or jury shall determine whether, beyond a  
9 reasonable doubt, the person is a sexually violent predator. If such  
10 determination that the person is a sexually violent predator is made by a  
11 jury, such determination shall be by unanimous verdict of such jury. Such  
12 determination may be appealed. If the court or jury determines that the  
13 person is a sexually violent predator, the person shall be committed to the  
14 custody of the secretary of social and rehabilitation services for control,  
15 care and treatment until such time as the person's mental abnormality or  
16 personality disorder has so changed that the person is safe to be at large.  
17 Such control, care and treatment shall be provided at a facility operated by  
18 the department of social and rehabilitation services.

19 (b) At all times, persons committed for control, care and treatment by  
20 the department of social and rehabilitation services pursuant to K.S.A. 59-  
21 29a01 *et seq.*, and amendments thereto, shall be kept in a secure facility  
22 and such persons shall be segregated at all times from any other patient  
23 ~~under the supervision of the secretary of social and rehabilitation services~~  
24 ~~and commencing June 1, 1995, such persons committed pursuant to K.S.A.~~  
25 ~~59-29a01 *et seq.*, and amendments thereto, shall be kept in a facility or~~  
26 ~~building separate from any other patient in a facility or building~~ under the  
27 supervision of the secretary of social and rehabilitation services. The  
28 provisions of this subsection shall apply to any facility or building utilized  
29 in any transitional release program or conditional release program.

30 (c) The department of social and rehabilitation services is authorized  
31 to enter into an interagency agreement with the department of corrections  
32 for the confinement of such persons. Such persons who are in the  
33 confinement of the secretary of corrections pursuant to an interagency  
34 agreement shall be housed and managed separately from offenders in the  
35 custody of the secretary of corrections, and except for occasional instances  
36 of supervised incidental contact, shall be segregated from such offenders.

1 (d) If any person while committed to the custody of the secretary  
2 pursuant to K.S.A. 59-29a01 *et seq.*, and amendments thereto, shall be  
3 taken into custody by any law enforcement officer as defined in K.S.A.  
4 2011 Supp. 21-5111, and amendments thereto, pursuant to any parole  
5 revocation proceeding or any arrest or conviction for a criminal offense of  
6 any nature, upon the person's release from the custody of any law  
7 enforcement officer, the person shall be returned to the custody of the  
8 secretary for further treatment pursuant to K.S.A. 59-29a01 *et seq.*, and  
9 amendments thereto. During any such period of time a person is not in the  
10 actual custody or supervision of the secretary, the secretary shall be  
11 excused from the provisions of K.S.A. 59-29a08, and amendments thereto,  
12 with regard to providing that person an annual examination, annual notice  
13 and annual report to the court, except that the secretary shall give notice to  
14 the court as soon as reasonably possible after the taking of the person into  
15 custody that the person is no longer in treatment pursuant to K.S.A. 59-  
16 29a01 *et seq.*, and amendments thereto, and notice to the court when the  
17 person is returned to the custody of the secretary for further treatment.

18 (e) If the court or jury is not satisfied beyond a reasonable doubt that  
19 the person is a sexually violent predator, the court shall direct the person's  
20 release.

21 (f) Upon a mistrial, the court shall direct that the person be held at an  
22 appropriate secure facility, including, but not limited to, a county jail, until  
23 another trial is conducted. Any subsequent trial following a mistrial shall  
24 be held within 90 days of the previous trial, unless such subsequent trial is  
25 continued as provided in K.S.A. 59-29a06, and amendments thereto.

26 (g) If the person charged with a sexually violent offense has been  
27 found incompetent to stand trial, and is about to be released pursuant to  
28 K.S.A. 22-3305, and amendments thereto, and such person's commitment  
29 is sought pursuant to subsection (a), the court shall first hear evidence and  
30 determine whether the person did commit the act or acts charged. The  
31 hearing on this issue must comply with all the procedures specified in this  
32 section. In addition, the rules of evidence applicable in criminal cases shall  
33 apply, and all constitutional rights available to defendants at criminal trials,  
34 other than the right not to be tried while incompetent, shall apply. After  
35 hearing evidence on this issue, the court shall make specific findings on  
36 whether the person did commit the act or acts charged, the extent to which  
37 the person's incompetence or developmental disability affected the  
38 outcome of the hearing, including its effect on the person's ability to  
39 consult with and assist counsel and to testify on such person's own behalf,  
40 the extent to which the evidence could be reconstructed without the  
41 assistance of the person and the strength of the prosecution's case. If after  
42 the conclusion of the hearing on this issue, the court finds, beyond a  
43 reasonable doubt, that the person did commit the act or acts charged, the

1 court shall enter a final order, appealable by the person, on that issue, and  
2 may proceed to consider whether the person should be committed pursuant  
3 to this section.

4 Sec. 2. K.S.A. 2011 Supp. 59-29a07 is hereby repealed.

5 Sec. 3. This act shall take effect and be in force from and after its  
6 publication in the statute book.