

59-29a19. Conditional release; plan of treatment; minimum term; hearing for final release; violating conditions of plan or release. (a) If the court determines that the person should be placed on conditional release, the court, based upon the recommendation of the treatment staff, shall establish a plan of treatment which the person shall be ordered to follow. This plan of treatment may include, but shall not be limited to: Provisions as to where the person shall reside and with whom, taking prescribed medications, attending individual and group counseling, maintaining employment, having no contact with children, not frequenting facilities, locations, events or otherwise in which children are likely to be present and not engaging in activities in which contact with children is likely. Upon a showing by the person that the person accepts the plan of treatment and is prepared to follow it, the court shall release the person from the transitional release program.

(b) After a minimum of five years have passed in which the person has been free of violations of conditions of such person's treatment plan, the treatment staff, or other professionals directed by the court may examine such person to determine if the person's mental abnormality or personality disorder has changed so as to warrant such person being considered for final discharge. The person preparing the report shall forward the report to the court. The court shall review the same. If the court determines that probable cause exists to believe that the person's mental abnormality or personality disorder has so changed that the person is safe to be entitled to final discharge, the court shall set a formal hearing on the issue. The attorney general shall have the burden of proof to show beyond a reasonable doubt that the person's mental abnormality or personality disorder remains such that such person is not appropriate for final discharge. The person shall have the same rights as enumerated in K.S.A. 59-29a06, and amendments thereto. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the attorney general, the person and the secretary.

(c) If, after a hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for final discharge, the court shall continue custody of the person with the secretary for placement in a secure facility, transitional release program or conditional release program. Otherwise, the court shall order the person finally discharged. In the event the court does not order final discharge of the person, the person still retains the right to annual reviews.

(d) At any time during which the person is on conditional release and the professional person designated by the court in the treatment plan to monitor the person's compliance with it determines that the person has violated any material condition of that plan, that professional person may request the district court to issue an emergency ex parte order directing any law enforcement officers to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written, facsimile or electronic copy form delivered to the court not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

(e) Upon the person being returned to the secure commitment facility from conditional release, notice thereof shall be given by the secretary to the court. The court shall set the matter for a hearing within two working days of receipt of notice of the person's having been returned to the secure commitment facility and cause notice thereof to be given to the attorney general, the person and the secretary. The attorney general shall have the burden of proof to show probable cause that the person violated conditions of conditional release. The hearing shall be to the court. At the conclusion of the hearing the court shall issue an order returning the person to the secure commitment facility, to the transitional release program or to conditional release, and may order such other further conditions with which the person must comply if the person is returned to either the transitional release program or to conditional release.

(f) The final discharge shall not prevent the person from being prosecuted for any criminal acts which the person is alleged to have committed or from being subject in the future to a subsequent commitment under this act.

History: L. 1998, ch. 198, § 2; L. 1999, ch. 140, § 7; L. 2010, ch. 5, § 6; Mar. 11.