

2021 Kansas Statutes

59-29a18. Transitional release; examination; annual review hearing for conditional release; rights and procedures; court orders. (a) During any period the person is in transitional release, the person committed under this act at least annually, and at any other time deemed appropriate by the treatment staff, shall be examined by the treatment staff to determine if the person's mental abnormality or personality disorder has significantly changed so as to warrant such person being considered for conditional release. The secretary shall provide the person with a written notice of the person's right to petition the court for release over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall also forward the report, as well as the notice and waiver form, to the court that committed the person under the Kansas sexually violent predator act. The court shall file the notice and the report upon receipt.

(b) The person must file a request for an annual review hearing within 45 days after the date the court files the annual written notice pursuant to subsection (a). Failure to request a hearing within 45 days pursuant to this subsection shall waive the person's right to a hearing until the next annual report is filed by the court. A contested annual review hearing for conditional release shall consist of consideration about whether the person is entitled to conditional release from transitional release. Only a person in transitional release shall be permitted to petition for conditional release. No person in transitional release shall be permitted to petition for final discharge.

(c) The person may retain, or if the person is indigent and so requests, the court may appoint, an examiner pursuant to K.S.A. 60-235, and amendments thereto, and the examiner shall have access to all available records concerning the person. If the person is indigent and makes a request for an examiner, the court shall determine whether the services are necessary and shall determine the reasonable compensation for such services. The court, before appointing an examiner, shall consider factors including the person's compliance with institutional requirements and the person's participation in treatment to determine whether the person's progress justifies the costs of an examination. The appointment of an examiner is discretionary.

(d) At the annual review hearing, the burden of proof shall be upon the person to show probable cause to believe the person's mental abnormality or personality disorder has significantly changed so that the person is safe to be placed in conditional release. The report, or a copy thereof, of the findings of a qualified expert shall be admissible into evidence in the annual review hearing in the same manner and with the same force and effect as if the qualified expert had testified in person. If the person does not participate in the prescribed treatment plan, the person is presumed to be unable to show probable cause to believe the person is safe to be released.

(e) The person shall have a right to have an attorney represent the person at the annual review hearing to determine probable cause, but the person is not entitled to be present at the hearing.

(f) If the person does not file a petition requesting a hearing pursuant to subsection (b), the court that committed the person under the Kansas sexually violent predator act shall then conduct an in camera annual review of the status of the person's mental condition and determine whether the person's mental abnormality or personality disorder has significantly changed so that an annual review hearing is warranted. The court shall enter an order reflecting its determination.

(g) If the court at the annual review hearing determines that probable cause exists to believe that the person's mental abnormality or personality disorder has significantly

changed so that the person is safe to be placed in conditional release, then the court shall set a hearing for conditional release on the issue. The person shall be entitled to be present and entitled to the assistance of counsel. The attorney general shall represent the state and shall have a right to have the person evaluated by experts chosen by the state. The person shall also have the right to have experts evaluate the person on the person's behalf and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing for conditional release shall be upon the state to prove beyond a reasonable doubt that the person's mental abnormality or personality disorder remains such that the person is not safe to be placed in conditional release and if conditionally released is likely to engage in repeat acts of sexual violence.

(h) If, after the hearing for conditional release, the court is convinced beyond a reasonable doubt that the person is not appropriate for conditional release, the court shall order that the person remain either in secure commitment or in transitional release. Otherwise, the court shall order that the person be placed on conditional release.

(i) 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.

(j) For the purposes of this section, if the person is indigent and without counsel, the court shall appoint counsel to assist such person.

History: L. 1998, ch. 198, § 1; L. 1999, ch. 140, § 6; Revived, L. 2016, ch. 64, § 4; L. 2017, ch. 83, § 3; July 1.