MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Held in Room 519 S, at the Statehouse at 11:00 a. m./~~p.m.~~ on January 24, 19 78.

All members were present except: Senators Steineger and Hein

The next meeting of the Committee will be held at 11:00 a. m./~~p.m.~~ on January 25, 19 78.

~~The minutes of the meeting held on [illegible] 19 were considered, corrected and approved.~~

Elaine Steineger
Chairman

The conferees appearing before the Committee were:

Frank L. Gentry - Kansas Hospital Association
Kay Falley - Shawnee County Unified Court Services
Bill Imming - Private Citizen
Laurie Imming - Private Citizen
Jim Bryan - Private Citizen
Gordon M. Riffel - Topeka Public Schools
Jim Claussen - Mental Health Association
Dr. Stuart M. Frager
Dr. Erwin T. Janssen - Menninger Foundation
Charles Hamm - Department Social and Rehabilitation Services

Staff present:
Art Griggs - Revisor of Statutes
Paul Purcell - Legislative Research Department
Jerry Stephens - Legislative Research Department

Senate Bill No. 583 - Requirements with regard to applications to determine whether a person is a mentally ill person.
No conferees appeared to testify on this bill, and since there were a number of conferees wishing to appear on Senate Bill 550, the sponsor of the bill, Senator Simpson, stated he would be willing to defer his presentation on the bill until a later time.

Senate Bill No. 550 - Mentally ill persons.
Frank Gentry, of the Kansas Hospital Association, stated that the response he had received from hospitals concerning this bill indicated that they opposed many of the provisions of the bill. Hospitals feel that there are presently enough barriers for getting treatment for a patient. He also stated the change from 72 hours to 48 hours in line 247 might cause some difficulties.

Kay Falley, of the Shawnee County Unified Court Services, testified in opposition to the bill. She is supervisor of the intake staff, and stated that when a juvenile has problems, her department makes a determination on what is best for the child. They processed

SB 550 continued -

3,510 juveniles in 1977. Since the state hospitals have administratively required the consent of juveniles over the age of 14, her department no longer has the option to send a juvenile patient there. They no longer can send juveniles who have "flipped out" to the state hospital. The Shawnee County Youth Center is the only place to send them. Her department tries to divert juveniles from the juvenile court. She feels that lowering the age of consent from 18 to 14 would create more problems, and would cause more juveniles to be appearing in juvenile court.

Bill Imming, Director of Planning Operations of the Menninger Foundation, testified in his individual capacity as the father of a teenager who has experienced this situation. He related some of the background of his daughter's problem and stated that if this proposed law had been in effect at the time his daughter had her difficulty, he would not have a daughter today. At that time, she would not have signed herself into the hospital. He introduced his daughter, and she testified briefly, stating that if she had had to make the choice of voluntarily signing the papers for her treatment, she would not have signed them, and would have gotten into difficulties and wound up in juvenile court.

Dr. Riffel appeared in opposition to lowering the age of consent from 18 to 14. Sometimes parents are not motivated sufficiently to seek the necessary treatment. In those instances where parents are very interested in obtaining treatment, their children have a great deal of difficulty putting things together for themselves. It would be very difficult for a child to make a decision to enter the hospital. Most teenagers would make the decision not to seek treatment. He stated they have had three suicides this year. He would like to see the present law amended so as to permit a child to receive hospitalization if the child chooses to seek treatment, and the parent does not consent.

Mr. Jim Bryan spoke as a parent and concerned father. He related his personal experience of having to admit his 15 year old daughter for treatment. She was not willing to accept in-patient treatment, wanted only out-patient treatment. He feels there would be a real problem with changing the responsibility for treatment of a teenager from the parent to the child. He doesn't feel kids that age have the judgment or maturity to make that decision. Most kids make the decision for no in-patient treatment. He related his personal problem of signing his daughter into the hospital, particularly the difficulties experienced over a weekend when the court was not in session. He stated parents have responsibilities for their children in many ways. To give parents the option of going to court instead of assuming the responsibility themselves would be a mistake. He strongly urged that the bill be amended, or killed, leaving the present law as it is.

continued -

SB 550 continued -

Jim Claussen, of the Mental Health Association of Shawnee County, appeared in opposition to the provisions of the bill reducing the age from 18 to 14. He related his association receives many calls from parents asking what can be done. He would like to see the situation remain in the hands of the parents. He feels that in the Topeka area, the rights of children are very well protected. In answer to a question, he stated he feels the rest of the bill, other than sections two and three, is satisfactory.

A committee member asked who had appeared at the interim in support of lowering the age. Mr. Griggs related the Pennsylvania case, in the Federal District Court, Bartley vs Kremens. Senator Allegrucci also stated that testimony received by the interim committee indicated that sometimes parents commit children to get rid of them. It was also pointed out that the interim committee received testimony from Vista volunteers and representatives of the Legal Aid Society of Shawnee County.

Dr. Stuart Frager spoke as a private citizen. He opposed the lowering the age to 14; he stated this undermines the authority of the parents to obtain necessary treatment. Out-patient treatment doesn't always work. Teenagers do need good adult structure. If this bill passes, more kids will be on the streets. It would result in pushing kids through court. Although the intention of the bill is good, it will not work for the disturbed adolescent.

Dr. Janssen testified. His prepared statement is attached hereto. He stated that subsection 7 of section 1 would help the general hospitals in Kansas. He spoke in opposition to changing the age from 18 to 14. He believes the child has a right to a future. He recommended that no change be made in the age for voluntary admission, and that further study should be undertaken, in order to determine what safeguards and procedures are needed. He stated it is hard to work with an adolescent without a parent or guardian involved.

Charles Hamm appeared, stating that he has some questions with the bill. He inquired as to what sort of hearing would be necessary to obtain the approval of court as called for in line 95, and inquired whether this was to be a rubber stamp request. Referring to lines 108 and 109, he inquired what the result would be if a child would sign himself into a hospital and the parent wants to object. He inquired what section of the court would hear such an objection. He also raised the question as to who would represent the child at an objection hearing.

The meeting adjourned.

These minutes were read and approved by the committee on 2-9-78.

1-24-78

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Frank L. Gentry	Topeka	Ks Hospital Assoc.
Gordon M. Riffel	1725 Arnold TOPEKA KA.	Topeka Public Schools
Stuart M. Frager	1515 Boswell	Private Citizen
JIM CLAUSSEN	1268 Western	Mental Health Assn.
WILLIAM IMMING	4944 N.W. TOPEKA	PRIVATE CITIZEN
Laurie Imming	4944 N.W Topeka	" "
Ron Stewart	3225 Burton, Topeka	" "
DAVID BRAUNSDORF	2709 W. 29th	
Kay Talley	1239 MacVicar	Shawnee Co. Unified Court Services
Erwin T. JANSSEN	Box 829, Topeka, KS 66601	Ks Psychiatric Association & Menninger Foundation
Kes Seamen	622 W. 25th Apt. B	Student — Legislative Intern
Charles V. Hamm	State Office Bldg	SRS
Steve Steer	Topeka	T.P.D.
Richard Rock	Lawrence	Lawrence Police Dept
Matt Benson	Topeka	

1-24-78

TESTIMONY AND COMMENTS FOR THE SENATE JUDICIARY COMMITTEE

January 24, 1978

Re: An Act Relating to Mentally Ill Persons (S.B. 550)

Senator Pomeroy, Ladies and Gentlemen:

As a child psychiatrist practicing here in Topeka, and as a member of the Kansas Psychiatric Association (Kansas District Branch of the American Psychiatric Association), I feel privileged to share with you some remarks built out of concerns regarding the current proposed changes in the mental health laws. I would in no way question the necessity to have appropriate mechanisms for protecting the interests of children, adolescents, and parents. I have chosen an occupation that speaks for the health, growth and development, and life-fulfilling satisfactions available to people following healthy childhood experiences. It is from this background that I would speak to the issues.

The major issue of concern relates to the change in age of voluntary admission for adolescents. I feel that changing the age from 18 years to 14 years will be detrimental to the child and adolescent in need of help.

A) The Adolescent's Rights and Needs:

I believe that the child and adolescent has a right to a future and to have growth experiences that provide opportunities for a meaningful future, providing hope and maximum development of individual potential.

We, as parents, and the State government have definite responsibilities to insure the welfare of our children. For example we, as parents, consider that certain limitations may be necessary from time to time in the promotion of future benefits for our children. We demonstrate this through manditory education which does not allow a child "total freedom." This is accepted by concerned adults as an

important "limitation" on the child's activity in the best interest of the child's future.

If current difficulties in maturation (usually noted by the school, behavioral or personal problem) indicate the likelihood of future disabilities, especially activity that is likely to create juvenile delinquency and involvement in the juvenile court, does not the adolescent have the right to expect that parents or other adults will provide treatment and help? Many times the adolescent is attempting to attract attention through such difficulties and in the deepest sense wants help.

The right to treatment must be seen, for the developing child and adolescent, at least as important as "the right to freedom," especially if such freedom provides the opportunities for the likelihood of future difficulty. Such freedom becomes a "set-up" for the adolescent. A mistaken concept that frequently is held states: "Structure, rules, and guidelines will prevent growth and expansion of the personality." This, if applied in a general way, is psychologically incorrect and potentially harmful to the child. Only after the child and adolescent have first incorporated into his or her personality solid impulse control and good judgement is it fair to allow increasing freedoms for that child. Indeed it might be seen that the adults in the environment, by not providing adequate structure, are actually encouraging problems.

The presently proposed change lowering the age from 18 years to 14 years might provide present and "temporary" freedoms for the child, but future growth and development, I believe, may be compromised. Legal safeguards may thus preclude age-appropriate growth opportunities when such growth opportunities can only come through a treatment process. From the clinical point of view, we as clinicians deeply hope that the

child or adolescent coming for help comes with a positive attitude and expectation for feeling better. We also recognize that all of us, at any age, fear change, even if it would be better and we know that it is needed. Going to the dentist seems to be a time honored point of procrastination! From the standpoint of physical care, we hold parents responsible for their minor children and take them to court for neglect if this responsibility is not accepted. With the proposed change in the age for voluntary admission are we giving a double message to parents: We hold you responsible for physical care, but not for the emotional well-being of your child?

The adolescent may not have sufficient capacity to understand the consequences of current behavior, especially if problems are present. Denial of problems, even for adults, is very strong. By asking the youngster to decide for himself whether he wants help may be putting far too much pressure and responsibility upon the youngster. The law recognizes that in other aspects adolescents are not able to make such judgements (such as entering into contracts), and if the age change is acted upon, there would be obvious inconsistencies.

The inconsistency in "legal age" puts parents in a position in which the law requires them to be responsible for their child's behavior, but without parental authority to obtain help if this is needed for their youngster.

Lowering the age from 18 to 14 years may be a situation where the concept of "freedom" conflicts with what is increasingly being seen as a right, the right to adequate health care in a timely manner.

Adolescents who should have access to treatment may not obtain help through mental health facilities if the procedures require parents

to go to court, and thus, through a cumbersome and painful process.

From clinical experience it is not surprising to find that without help, the child may continue with problems and end up in other caring systems in society, namely the juvenile court and penal system. The courts are already seeing youngsters in increasing numbers who need psychological help, but who are being referred back to the court because the youngsters are not signing for voluntary help on their own initiative as is the current state institutional guideline. They are locked up in detention, whereas active treatment is necessary.

B) The Family and the Adolescent:

Such a change in the age requirements might well promote increasing disintegration and break-down of the family unit.

As was mentioned by Senator Pomeroy in his presentation yesterday to the Kansas Council for Children and Youth, we need to reemphasize the family unit. This is stated by educators, religious and community leaders and not just by child psychiatrists. Parents are already faced with problems of erosion of their parental responsibility and authority. It should not be assumed by the state that parental rights and responsibilities regarding seeking help be changed without good cause. Methods can be instituted to prevent parental or adult abuse of inappropriate hospitalization. Such "dumping" as was claimed in the Bartley vs. Kremens case is infrequent. It is well recognized among legal and mental health professionals that the findings in this case are open to review indepth and solid conclusions need to be established before action is taken to change laws.

In our clinical work we find it extremely important that for treatment, a trusting relationship must be fostered. This trusting relationship is between the adolescent, the treatment team, and the

parents. From our hospital experience we have noted that such a trusting relationship is developed over a period of time. Having the adolescent in the hospital provides him an opportunity to build these relationships. The ability to reach out and form relationships appears to weigh heavily as a prognostic sign in success or failure of treatment.

Admission procedures that might prompt parent/adolescent distance through legal steps should be minimized. If the parents and child are put in adversary positions, a greater breach of relationship is likely to take place. If through such an adversary process the court finds "in favor" of the adolescent, where is he to go following such an experience? Does the court continue its interest over several years? Does the child go back to the home and to the parental relationships ruptured through such an adversary process?

In the well-known Bartley vs. Kremens case, Judge Broderick stated in his dissenting opinion, "The majority (in their opinion) has described an 'overdose' of due process, and more consideration (should) be given to parent/child relationships."

C) The State Position and its Relationship to the Adolescent:

One must remember that during the adolescent period, there is age-appropriate desire to rebell and take increasing risks. This is done in a way to test out one's ability and position.

Is it likely that through the proposed change in the statute the State will unknowingly put the adolescent into the position to encourage and try out this activity against his best interest?

I would again remind you that one must seriously consider whether the change downward in age as proposed will put the child into the

decision-making responsibility before an age-appropriate judgement has been acquired. And, what is likely to happen with this judgement under the pressures of heated emotions?

The statute as written requires that "dangerousness" be demonstrated. However, I propose that a more appropriate and sufficient standard would be "the need for treatment," thus emphasizing the developmental differences (and difference in legal requirements) for children and adolescents when compared to adults. If we wait for the child to demonstrate "dangerousness" we may be too late.

RECOMMENDATIONS:

1) No change should be made in the age for voluntary admission to mental hospitals for the treatment of children and adolescents.

2) Further study should be undertaken, determining what safeguards and procedures are needed. This would follow the recommendation given in professional literature and would give us a chance in Kansas to develop a model that incorporates collaborative input available from:

   a. Juvenile law.
   b. Consumers (through the Mental Health Association)
   c. Psychiatric Social Workers
   d. Psychologists
   e. Educators
   f. Child Psychiatrists (choosing one from the private sector, Community Mental Health Center, and State Hospital)

3) The study and research of this area should be granted <u>sufficient time</u> and <u>financial support</u> to provide the best process available for our families, parents, and children in the State of Kansas.

Erwin T. Janssen, M.D.

1-25-78

W. WALTER MENNINGER, M. D.
1505 Plass Ave.
Topeka, Kansas 66604

January 23, 1978

Senator Elwaine Pomeroy
1619 Jewell
Topeka, Ks. 66604

Dear Elwaine:

This note is prompted by Senate Bill 550, for which I understand you are scheduled to have hearings on Tuesday, January 24. I appreciate that this Bill attempts to address a number of issues which have come up since the passage of the revised Mental Health Law two years ago. Some of the issues and changes are commendable, but there is one in particular about which there is considerable question. I am referring particularly to the issue of lowering the age for voluntary admission procedure from 18 to 14, which is addressed in Sections 2 and 3 of the proposed bill.

This is an extremely complicated issue which has been prompted by some of the legal developments surrounding the not-always-completely-voluntary hospitalization of adolescents arranged by their parents or legal guardian. As you are presumably aware, this issue surfaced in the Bartley v. Kremens case in Pennsylvania, on which the Supreme Court of the United States refused to rule.

The heart of the issue is the conflict between the rights and responsibilities of parents to arrange for treatment for their youngster, and the assurance that that youngster will not be abused by the parents as they seek to assure the proper attention and care for their child - and at what point and on what grounds does the state interpose itself between the child and the parent and fix them in adversarial positions.

I am primarily concerned that no legislation be passed on this issue without a thoughtful and thorough review of the implications of the act on treatment for the emotionally troubled adolescent, and his or her family. Otherwise, this may be another instance where well-intentioned legal advocates impose a solution which completely disregards some of the psychological and treatment issues involved in the problem.

I am aware that the Division of Mental Health Services of SRS has imposed an administrative policy that requires youngsters 14 and up to sign themselves for voluntary admission. However, that policy too was initiated in response to legal pressure, and not in response to any considered reflection and input from behavioral scientists, and particularly child psychiatrists. I hope that your legislative action will be formulated on the basis of that kind of input and knowledge, and not strictly because a Pennsylvania Supreme Court has made a judgment in this area.

It is troubling that this Bill again puts me in the position of seeming to oppose an extension of rights of due process and somehow be in opposition to the rights of patients. The right of patients to receive the care they need, whether they may fully appreciate it or not, is of foremost importance in my mind. I recognize the need for safeguards to assure that individuals are not inappropriately referred to psychiatric treatment, but I continue to believe that one of the most important safeguards is for the State to assure that treatment facilities within the state are properly funded and staffed, and meet recognized standards for accreditation.

The particular issue with adolescents has to do with that stage of life being a point when the youngster is struggling with the conflict of dependence/independence. Often the adolescent must go through a kind of rebellion, and many of our troubled youngsters play upon splits between authority figures. They want to have power, and yet are scared of it because they recognize their uneven ability to handle it. The more one has to involve the legal system, the greater the complications in trying to develop an effective treatment program for a youngster.

Again, the issue surrounding this can be better addressed by some experts in child psychiatry, and I would urge that before Sections 2 and 3 are incorporated into the Mental Health Law, you take the time to fully assess the implications of a change in age for voluntary consent.

Sincerely,

W. Walter Menninger, M.D.