

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Elwaine F. Pomeroy at
Chairperson

10:00 a.m./~~pm~~ on January 18, 1984 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ were: Senators Pomeroy, Winter, Burke, Feleciano, Gaar,
Gaines, Hein, Hess, Steineger and Werts.

Committee staff present: Mary Torrence, Revisor of Statutes
Mike Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Harry, native son of Sedgwick County
Senator Billy McCray
Senator Gerald Karr
Dr. James A. McHenry, Jr., SRS/Alcohol and Drug Abuse Services
Mike Flyzik, SRS/Alcohol and Drug Abuse Services
Bruce Beale, Kansas Citizens Advisory Committee on Alcohol and other Drug Abuse
Glenn Leonardi, Kansas Alcoholism and Drug Abuse Counselor's Association
George Heckman, Kansas Association of Alcohol and Drug Program Directors
Jim Clark, Kansas County and District Attorneys Association

Senate Bill 232 - Treatment act for drug abusers.

The chairman explained this is a carry-over bill from last session, and it is patterned after the set of statutes providing for involuntary commitment for persons who have problems with alcohol. There is a question whether to have it as a separate free standing statute or as part of the alcohol commitment statutes.

Harry testified as a native son of Sedgwick County. He explained the reason for using only the first name will become apparent in his testimony (See Attachment No. 1).

Senator Billy McCray, the prime sponsor of the bill, explained they want to get some kind of a bill on the books. They want some avenue to serve the kind of people described by the first conferee.

Senator Karr, a co-sponsor of the bill, testified he would like the committee to carefully reconsider an adjustment in Kansas law in regard to commitment of drug abusers. A copy of his remarks is attached (See Attachment No. 2).

Dr. James A. McHenry, Jr. testified currently Kansas does not have a procedure to provide court ordered treatment for persons who are incapacitated by drugs or for persons who are a danger to themselves or others because of drug abuse. A copy of his testimony and a copy of suggested amendments are attached (See Attachments Nos. 3 & 4). A committee member inquired what programs are available that deal with this problem? Dr. McHenry replied there are programs that deal with both alcohol and drugs. They feel there might be as many as 100 cases come up under this legislation. The committee member inquired of the fiscal note regarding the bill? Dr. McHenry replied he didn't see ramifications of a major fiscal consequences. The chairman recognized Mike Flyzik to answer questions from the committee. The chairman pointed out alcohol is legal where drug use is not legal.

Bruce Beale testified in support of the bill. A copy of his testimony is attached (See Attachment No. 5). He added the majority of people using legislation as this usually is youth. A committee member inquired, do you have any idea or prediction about what kind of usage this procedure would have? How many people would use this procedure in Lawrence? Mr. Beale replied, they have 150 active clients; in Lawrence,

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on January 18, 1984

Senate Bill 232 continued

the bill would apply to no more than four or five at the most per year. He sees no additional expense to the state whatsoever.

Glenn Leonardi appeared in support of the bill. A copy of his testimony is attached (See Attachment No. 6). A committee member inquired how many members in your organization and where do they operate? Mr. Leonardi replied they have a statewide representation of 250 to 300 members.

George Heckman testified in support of the bill. A copy of his testimony is attached (See Attachment No. 7). He added, as you hear stories the way people progress on their addictions, the cost to society is more and more as they become more addictive. The state and individuals continue to pay as people are incarcerated. This is a method to short circuit that process. There is a consistent network of programs, detoxification programs, many hospitals have detoxification programs, large metro areas have social and detoxification programs and out patient services. He said an increasing number of people are coming in at an earlier time. A committee member inquired of the number of those who need treatment in a year and what would be the increase if the bill were enacted? Mr. Heckman replied, somewhere around \$20,000 for people that participate in the treatment network across the state concerning alcohol and drugs. He reported there is a national statistic that ten to fifteen percent of those people who are in need of treatment actually receive it. He was asked to elaborate on which type of person who comes in for treatment. Mr. Heckman explained before, generally, they were older and generally male. As time progressed, more women, now nearly one-third of the client population are in treatment programs. There are different kinds of intervention, by families, by lawyers, by the juvenile justice system. Studies indicate a high percentage of people who end up incarcerated, end up having an alcohol or drug problem. They see a larger group at an early age, having greater treatment success, because they haven't lost everything. There is a treatment system set up so they can get back on their feet and be productive. A large percentage do recover and become productive citizens. A committee member inquired what are causes of this abuse of alcohol and drugs? Mr. Heckman replied the number of people affected has not changed that much dealing with alcohol; with drugs it follows a similar kind of process as alcohol and increased availability. They are seeing the need to develop this system to deal with a very serious problem in our society that was not dealt with before. The chairman inquired, what sort of success rate do your programs have? Mr. Heckman replied it depends on the type of person involved. If that person has support systems working, on followup you can find about 70% have improved their life situation.

The chairman inquired of Dr. McHenry, who prepared the suggested amendments for you? Dr. McHenry replied he worked on them from the work of the staff attorney. They would be willing to work with committee staff members in preparing the amendments. They will make available other information to answer questions the committee had brought up.

The chairman recognized Jim Clark and inquired if his organization had an opinion on this? Mr. Clark replied, why make a separate statute?

The chairman recognized Mike Flyzik to explain the suggested amendments prepared by Alcohol and Drug Abuse Services. The chairman requested Senator Karr to study the proposed amendments and report back to the committee.

Senator Werts moved to approve the minutes of January 16, 1984; Senator Hess seconded the motion, and the motion carried.

The meeting adjourned.

1-18-84

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Nadine Belf	Topeka	Doc
Bruce Belf	Lanvale	Cit. Adv. Comm.
George Dehman	Lawrence	ICADPO
James A. McHenry, Jr.	Topeka	SRS / ADAS
Michael A. Flynn	Topeka	SRS / ADAS
Harry	Wichita	Citizen
Alvin Lawrence	Topeka	KADACH
Jim Clark	"	KC DAA
Ted Rice	Olathe	olath chamber
Tom Futzler	Topeka	Sen Hess

1-18-84
Attach. #1

Kansas State Legislature
Senate Judiciary Committee
Mr. Chairman
Members of the Committee

My name is Harry. The reason for using only the first name will become apparent in my testimony. I am a native son of Sedgwick County.

I appreciate this opportunity to speak in support of Senate Bill 232.

In the past three years I have learned more about substance abuse than I ever aspired or expected to know. My youngest son, who is now 19, taught me most of what I know about substance abuse. Presently he is seeking to find his way to recovery from abusing drugs. For this reason, I do not want my activity - and use of the family name - to subject him to any prejudice in his recovery effort.

I can say the last time I talked with him he was alive, not in jail, and still had a job. We have to take it one day at a time. But, it has not always been totally so.

As a youngster, he had a wide variety of interests. At one time there were two salt water aquariums. He was into radio controlled airplanes and a boat. He belonged to two explorer scout groups at the same time - one hot air ballooning, the other computers. As a ninth grader, he built his own personal computer and won the computer hog award for logging the most time on the school computer. He got his scuba diving ticket. He snow skied the intermediate slope after 1 hour beginning instruction when he was still in grade school. He did everything that interested him 150%.

When he started high school in the 10th grade, he started liquor and drug use. He soon did that 150% too. A year later, December 1982, after the 1st 9 weeks as a junior, he was a high school drop out. He was rapidly going down hill.

Later on when he was in treatment, he wrote his version of his life. I want to share some of that with you.

As his father, I could see different signals from him that represented calls for help. But he would not agree to go into treatment. For the greatest fear of a drug user is the fear of being cut off from the source of supply of drugs. That overwhelming fear kept him from agreeing to go into treatment, even when he knew his problem was out of control.

I have had three experiences going to probate court seeking commitment to treatment in two different Kansas counties. I have learned

1st - The Probate Court is careful to protect the interest of the person who is the defendant.

2nd - Under Kansas law the Court will not make a commitment for drug abuse - only for alcoholism, or, because the defendant is a threat to himself (suicidal) or a threat to others.

It's very difficult to assert your child is insane, and it's tough to claim he's an alcoholic when he has never been arrested for an alcohol offense.

Attch. 1

1

Kansas State Legislature
Senate Judiciary Committee
Mr. Chairman
Members of the Committee
Page 2

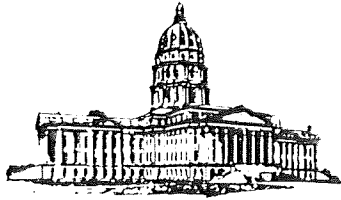
As a result of the drug abuse treatment my son has experienced, I have learned that drug abuse is as much a disease as alcoholism. Alcohol is a drug. An alcoholic is a drug abuser. The treatment programs - the psychological therapy treatment - for alcoholism and drug abuse are the same. The alcoholic patients and drug abuse patients are together in treatment programs.

The Kansas statutes need to be revised to provide for court commitment to treatment of the disease of drug abuse the same as it provides for commitment to treatment of alcoholics.

Thank you for this opportunity to speak. I will be pleased to respond to questions.

1-18-84
Attach. # 2

GERALD "JERRY" KARR
SENATOR, SEVENTEENTH DISTRICT
CHASE, LYON, MARION, MORRIS,
OSAGE COUNTIES
R R 2, BOX 101
EMPORIA, KANSAS 66801



COMMITTEE ASSIGNMENTS
MEMBER AGRICULTURE AND SMALL BUSINESS
COMMERCIAL AND FINANCIAL INSTITUTIONS
LABOR AND INDUSTRY

TOPEKA

SENATE CHAMBER

January 18, 1984

Statement to the Senate Judiciary Committee
Regarding: S.B. 232

Mr. Chairman and Members of the Committee:

As a co-sponsor of S.B. 232, I would like the Committee to carefully re-consider an adjustment in Kansas law in regards to commitment of drug abusers. We are now equipped to handle similar problems as they relate to the alcoholic. However, questions regarding the management of individuals incapacitated by drugs are not properly addressed by current law.

This past year in Emporia and throughout Kansas, our attention has been directed to the more complex challenges resulting from the broader use of drugs and alcohol. The "Chemical People" programs used this Fall, has further encouraged citizens in my Senate district to seek all possible channels to address the broader drug problem.

Senate Bill 232 would allow friends and parents another opportunity to assist their neighbors and children that must confront serious drug abuse. I would be happy to work with the Committee in further improving S.B. 232.

Attach. 2

Attach. #3

To: Senate Committee on Judiciary
From: Dr. James A. McHenry, Jr., Commissioner
SRS/Alcohol and Drug Abuse Services
Date: January 18, 1984
RE: SB 232

Currently Kansas does not have a procedure to provide court ordered treatment for persons who are incapacitated by drugs or for persons who are a danger to themselves or others because of drug abuse.

Last year, this committee heard testimony from citizens, judges and county attorney's, all providing examples for the need of this procedure and all requesting favorable action on this bill by this committee. The need for this commitment process has not diminished during the past 12 months. During an average year in Kansas, we estimate that about 100 Kansans do not receive treatment for their drug abuse problems because our state does not have a procedure to provide for involuntary commitment. The absence of this statute not only affects individual abusers, but also their families and communities, who continue to suffer because there is no legal intervention process available to them, short of recourse into the criminal justice system.

Senate Bill No. 232 provides a well-defined process that family members, friends, judges and law enforcement officials can use to assure that drug dependent persons receive the treatment services which they so urgently need.

This bill closely follows the procedures contained in the existing alcohol commitment statutes rather than establishing a new procedure for courts and treatment programs. The committee should be advised that SRS has introduced to the House Committee on Public Health and Welfare, a bill that proposes amendments to the current alcohol commitment statutes. These changes are primarily technical in nature, and, if enacted, they would align the alcohol procedure more closely with the mental illness commitment procedure. Since it is desirable to consider adopting uniform commitment procedures for the courts to follow, I am providing the Committee with these amendments as they relate to Senate Bill 232.

I believe this legislation represents another important step toward providing essential drug evaluation and treatment services to the citizens of Kansas, and I support your efforts in enacting this legislation. I would also like to thank the chairman and the members of this committee for permitting me to share these views.

Attch. 3

SENATE BILL No. 232

By Senators Gannon, Allen, Arasmith, Chaney, Francisco, Gaines, Gordon, Hayden, Hein, Karr, Montgomery, Mulich, Parrish, Pomeroy, Reilly and Steineger

(By Request)

2-9

#4

attach.

0020 AN ACT concerning abuse of drugs; providing for treatment of
0021 drug abusers and persons incapacitated by drugs.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. For the purposes of this act:

0024

0025 (a) "Approved private treatment facility" means a private
0026 agency providing facilities for the care or lodging of drug abusers
0027 meeting the standards prescribed in K.S.A. 65-4603 and amend-
0028 ments thereto and K.S.A. 65-4607 and amendments thereto for the
0029 treatment of drug abusers or persons incapacitated by drugs;

0030 (b) "approved public treatment facility" means a treatment
0031 facility owned and operated by the state of Kansas or any political
0032 subdivision thereof and approved by the secretary, pursuant to
0033 K.S.A. 65-4603 and amendments thereto and K.S.A. 65-4607 and
0034 amendments thereto;

0035 (c) "treatment facility" means an approved public or private
0036 treatment facility, but such term shall not include a licensed
0037 medical care facility, a licensed adult care home or a facility
0038 licensed under the provisions of K.S.A. 1982 Supp. 75-3307b, or
0039 any amendments thereto, or a certified psychologist or a person
0040 licensed to practice medicine or surgery if such psychologist or
0041 person licensed to practice medicine or surgery treats in the usual
0042 course of their professional practice drug abusers or persons
0043 incapacitated by drugs and are not exclusively engaged in the
0044 usual course of their professional practice in treating such per-
5 sons;

Atch. 4

0046 (d) "committee" means the Kansas citizens' committee on
0047 alcohol and other drug abuse;

0048 (e) "department" means the department of social and reha-
0049 bilitation services;

0050 (f) ~~"incapacitated person" means a person who has been~~
0051 ~~adjudged incapacitated by the district court;~~

0052 (g) "intoxicated person" means a person whose mental or
0053 physical functioning is substantially impaired as a result of the
0054 use of drugs;

0055 (h) "treatment" means the broad range of emergency, outpa-
0056 tient, intermediate, and inpatient services and care, including
0057 diagnostic evaluation, medical, psychiatric, psychological, and
0058 social service care, vocational rehabilitation and career counsel-
0059 ing, which may be extended to drug abusers and intoxicated
0060 persons;

0061 (i) "patient" means a person who is an informal patient, a
0062 voluntary patient, a proposed patient, or an involuntary patient;

0063 (j) "informal patient" means a person either receiving outpa-
0064 tient care or treatment, which includes day and night hospital-
0065 ization, at a treatment facility or who is admitted therein pursuant
0066 to section 2;

0067 (k) "voluntary patient" means a person, other than an infor-
0068 mal patient, who is receiving care or treatment at a treatment
0069 facility other than by order of any court;

0070 (l) "proposed patient" means a person for whom an applica-
0071 tion pursuant to section 8 has been filed;

0072 (m) "involuntary patient" means a person incapacitated by
0073 drugs who is receiving care or treatment under an order of a
0074 district court;

0075 (n) "other facilities for care or treatment" means any mental
0076 health clinic, medical care facility, nursing home, physician or
0077 any other institution or individual authorized or licensed by law
0078 to give care or treatment to any patient;

0079 (o) "physician" means a person licensed to practice medicine
0080 and surgery under the Kansas healing arts act;

0081 (p) "head of the treatment facility" means the administrative
0082 director of a treatment facility;

Change to: "disabled person" means a person who has
been adjudicated disabled pursuant to KSA 59-3002
et. seq.;

0083 (q) "care or treatment" means such necessary services as are
4 in the best interests of the physical and mental health of the
0085 patient;

0086 (r) "discharge" means the final and complete release from
0087 care or treatment, by either an order of a district court pursuant to
0088 section 18 or a treatment facility;

0089 (s) "convalescent" shall describe the status of any patient who
0090 has not been discharged, but who is permitted by the head of the
0091 treatment facility to live apart from a treatment facility;

0092 (t) the various terms defined in K.S.A. 59-3002 and amend-
0093 ments thereto for obtaining a guardian or conservator, or both,
0094 mean the same herein as they do in that act;

0095 (u) "law enforcement officer" means any person who, by
0096 virtue of office or public employment, is vested by law with a
0097 duty to maintain public order or to make arrests for crimes,
0098 whether that duty extends to all crimes or is limited to specific
0099 crimes;

0100 (v) "person" means any individual, firm, partnership, corpo-
0101 ration, company, association, or joint-stock association, and the
0102 legal successor thereof;

0103 (w) "governmental unit" means the state, or any county, mu-
0104 nicipality, or other political subdivision thereof; or any depart-
0105 ment, division, board or other agency of any of the foregoing;

0106 (x) "secretary" means the secretary of social and rehabilita-
0107 tion services;

0108 (y) "drug abuser" means a person who habitually lacks self-
0109 control as to the use of drugs or uses drugs to the extent that such
0110 person's health is substantially impaired or endangered or such
0111 person's social or economic function is substantially disrupted,
0112 but such term shall not include a person who habitually lacks
0113 self-control in the use of alcohol;

0114 (z) "incapacitated by drugs" means that a person, as a result
0115 of use of drugs, is unconscious or has impaired judgment so that
0116 such person (1) is incapable of realizing and making a rational
0117 decision with respect to the need for treatment; or (2) lacks
0118 sufficient understanding or capacity to make or communicate
9 responsible decisions concerning either such person's well-being

0120 or estate;

0121 (aa) "state institution" means any institution within the de-
0122 partment of social and rehabilitation services which offers drug
0123 and alcoholism treatment programs; and

0124 (bb) "drug" means the following: (1) The same as the term
0125 controlled substance in K.S.A. 65-4101, and (2) fluorocarbons,
0126 toluene and volatile hydrocarbon solvents.

0127 Sec. 2. (a) A drug abuser may apply for voluntary treatment
0128 directly to an approved public treatment facility or state institu-
0129 tion as an informal patient. ~~If the proposed patient is a minor or
0130 an incapacitated person, such minor or a parent, a legal guardian,
0131 or other legal representative of such minor or incapacitated per-
0132 son may make the application.~~

0133 (b) Subject to rules and regulations adopted by the secretary,
0134 the head of an approved public treatment facility or state institu-
0135 tion may determine who shall be admitted for treatment. If a
0136 person is refused admission to an approved public treatment
0137 facility or state institution, the head of the treatment facility or
0138 state institution or the designee of the head of the treatment
0139 facility or state institution, subject to rules and regulations
0140 adopted by the secretary, shall refer the person to another ap-
0141 proved public treatment facility or state institution for treatment
0142 if possible and appropriate.

0143 (c) If an informal patient receiving inpatient care leaves an
0144 approved public treatment facility or state institution, such pa-
0145 tient shall be encouraged to consent to appropriate treatment. ~~If it
0146 appears to the head of the treatment facility or state institution or
0147 the designee of the head of the treatment facility or state institu-
0148 tion that the informal patient is a drug abuser who requires help,
0149 the secretary may arrange for assistance in obtaining supportive
0150 services and residential facilities.~~

0151 (d) If an informal patient leaves an approved public treatment
0152 facility or state institution, ~~with or against the advice of the head
0153 of the treatment facility or state institution or the designee of the
0154 head of the treatment facility or state institution, the secretary~~
0155 may make reasonable provisions for the transportation of the
0156 patient to another facility or to the patient's home. If the patient

add: (cc) "psychologist" means a person authorized to practice psychology as provided by the Kansas certification of psychologist act.

change to: The voluntary admission of a proposed patient who is a minor, ward or disabled person pursuant to KSA 59-3002, and amendments thereto, shall be subject to the provisions of KSA 59-3018, and amendments thereto.

delete

delete

delete

0157 has no home the patient may be assisted in obtaining shelter. If
 0158 the patient is a minor or an incapacitated person the request for
 0159 discharge from an inpatient facility shall ~~be made by a parent,~~
 0160 ~~legal guardian, or other legal representative or by the minor or~~
 0161 ~~incapacitated person if such person was the original applicant.~~

0162 Sec. 3. Any law enforcement officer who has reasonable be-
 0163 lief, upon observation, that any person is intoxicated or incapac-
 0164 itated by drugs and because of this condition is likely to be injured
 0165 or to injure others if allowed to remain at liberty may take such
 0166 person into custody without a warrant. ~~If such law enforcement~~
 0167 ~~officer takes such person into custody when the district court of~~
 0168 ~~the county of the presence of such person is available, the law~~
 0169 ~~enforcement officer shall forthwith present to such court an~~
 0170 ~~application for an order of protective custody pursuant to section~~
 0171 ~~7. If such law enforcement officer takes such person into custody~~
 0172 ~~when such court is not available, such law enforcement officer~~
 0173 ~~shall transport such person to any public treatment facility or~~
 0174 ~~state institution unless such person is charged with a crime, in~~
 0175 ~~which case such person may be arrested and otherwise dealt with~~
 0176 ~~under law in the same manner as other persons who are arrested.~~
 0177 ~~If the head of such treatment facility or state institution or the~~
 0178 ~~designee of the head of the treatment facility or state institution,~~
 0179 ~~after examination, has reason to believe that such person is~~
 0180 ~~intoxicated or incapacitated by drugs and because of this is likely~~
 0181 ~~to be injured or to injure others if allowed to remain at liberty, and~~
 0182 ~~if such treatment facility or state institution is willing to admit~~
 0183 ~~such person the law enforcement officer shall present to such~~
 0184 ~~treatment facility or state institution the application provided for~~
 0185 ~~in subsection (b) of section 4. If there is no public treatment~~
 0186 ~~facility or state institution available to receive such person within~~
 0187 ~~the territorial limits of the law enforcement officer's jurisdiction,~~
 0188 ~~the law enforcement officer may detain such person in a private~~
 0189 ~~treatment facility or other suitable emergency medical service, or~~
 0190 ~~any other suitable place, until the close of the first day such~~
 0191 ~~district court is available. Such person shall be entitled to imme-~~
 0192 ~~diately contact legal counsel or next of kin.~~

193 Sec. 4. Any public or private treatment facility or state insti-

insert: , ward or

change to: disabled

change to: subject to the provisions of KSA 59-3018,
 and amendments thereto.

change to: Said officer shall transport such person to
 any treatment facility where such person shall be
 examined by a physician or psychologist at such facility.
 If no physician or psychologist is available at the
 time such person is transported to the facility, such
 examination shall be made within a reasonable time not
 to exceed 17 hours. If a written statement is made by
 such physician or psychologist at the treatment facility
 that after preliminary examination such physician or
 psychologist believes such person to be intoxicated
 or incapacitated by drugs and because of this is
 likely to do physical injury to oneself or others if
 allowed to remain at liberty, and if such treatment
 facility is willing to admit such person the peace
 officer shall present to such treatment facility the
 application provided for in subsection (b) of K.S.A.
 65-4028 and amendments thereto. If the physician or
 psychologist does not believe such person to be
 intoxicated or incapacitated by drugs, the peace
 officer shall release such person.

If the physician or psychologist states that said
 physician or psychologist believes such person to be
 intoxicated or incapacitated by drugs but the treat-
 ment facility is unwilling to admit such person, or if
 there is no treatment facility available to receive such
 person within the territorial limits of the peace
 officer's jurisdiction, the peace officer may detain
 such person in any other suitable place until the
 close of the first day such court is open for the
 transaction of business, unless the court orders that
 such person remain in custody pursuant to the pro-
 visions of section 7.

If
 a peace officer detains a person pursuant to this
 subsection, the peace officer shall file the application

0194 tution may admit and detain any person for emergency observa-
 0195 tion, care or treatment under any of the following procedures:
 0196 (a) Upon an order of protective custody issued by a district
 0197 court pursuant to section 7.

0198 (b) Upon written application of any law enforcement officer
 0199 having custody of any person pursuant to section 3. The applica-
 0200 tion shall state:

0201 (1) The name and address of such person, if known;

0202 (2) the name and address of the spouse or nearest relative, if
 0203 known;

0204 (3) the officer's belief that such person is intoxicated or inca-
 0205 pacitated by drugs and because of this is likely to be injured or to
 0206 injure others if not immediately detained;

0207 (4) the circumstances under which such person was taken into
 0208 custody;

0209 (5) the fact that the district court is not available to issue an
 0210 order of protective custody pursuant to section 7.

0211 (c) Upon the written application of any reputable individual.
 0212 The application shall state:

0213 (1) The name and address of such person, if known;

0214 (2) the name and address of the spouse or nearest relative, if
 0215 known;

0216 (3) the applicant's belief that such person is intoxicated or
 0217 incapacitated by drugs and because of this is likely to be injured
 0218 or to injure others if not immediately detained;

0219 (4) the circumstances in support of such belief;

0220 (5) the fact that the district court is not available to issue an
 0221 order of protective custody pursuant to section 7. The application

0222 shall be accompanied by a statement in writing of a physician
 0223 stating that ~~the physician has examined~~ such person within 48

0224 hours before the date of the statement and confirming the exist-
 0225 tence of the described condition of such person.

0226 Upon the filing of the written application, the head of the
 0227 treatment facility or state institution or the designee of the head of
 0228 the treatment facility or state institution may authorize and order
 0229 in writing any law enforcement officer or other person to take into
 0230 custody and transport such person to the treatment facility or

Cont.

provided for in subsection (b) of section 4

as soon as the court is open for
 the transaction of business.

A taking into protective custody pursuant to this
 section is not to be construed as an arrest and no
 entry or other record shall be made to indicate the
 person has been arrested or charged with a criminal
 offense.

add: or psychologist

delete.

add: has been examined

0231 state institution. ^

0232 Sec. 5. Whenever any person has been admitted to a public or
 0233 private treatment facility or state institution pursuant to section 4,
 0234 the head of the treatment facility or state institution or the
 0235 designee of the head of the treatment facility or state institution
 0236 shall immediately notify such person's legal guardian, spouse or
 0237 any next of kin, if known, unless such application was made by
 0238 such person's legal guardian, spouse or next of kin.

0239 Sec. 6. The head of the treatment facility or state institution
 0240 or the designee of the head of the treatment facility or state
 0241 institution shall discharge any person admitted pursuant to sub-
 0242 section (a) of section 4 when the order of protective custody
 0243 expires. The head of the treatment facility or state institution or
 0244 the designee of the head of the treatment facility or state institu-
 0245 tion shall discharge any person admitted pursuant to subsection
 0246 (b) or (c) of section 4, not later than the close of the first full day
 0247 that the district court of the county of the presence of such person
 0248 is available after the admission date of such person unless an
 0249 order of protective custody, pursuant to section 7 has been enter-
 0250 ed by the district court of the county of the presence of or
 0251 residence of such person.

0252 Sec. 7. A district court may issue an order of protective cus-
 0253 tody under any of the following circumstances:

0254 (a) Upon the verified application of any law enforcement
 0255 officer. The application shall state:

- 0256 (1) The name and address of the person, if known;
 0257 (2) the name and address of the spouse or nearest relative, if
 0258 known;
 0259 (3) the affiant's belief that the person is intoxicated or inca-
 0260 pacitated by drugs and because of this is likely to be injured or to
 0261 injure others if not immediately detained;
 0262 (4) the circumstances under which the person was taken into
 0263 custody. ^

0264 This order shall only be valid until 5 p.m. of the second day the
 0265 district court is open for the transaction of business after the date
 0266 of issuance, but in no case more than 72 hours following the
 0267 issuance of such order, excluding Saturdays, Sundays and legal

Add: (d) Any treatment facility or personnel thereof,
 who in good faith renders treatment in accordance with
 law to any person admitted pursuant to subsection (b)
 or (c), shall not be liable in a civil or criminal
 action based upon a claim that such treatment was
 rendered without legal consent.

add: (5) The application provided for in section 8
 has been filed.

0268 holidays. The district court shall not issue successive orders of
0269 protective custody pursuant to this subsection.

0270 (b) Upon the verified application of any reputable person, if
0271 the application provided for in section 8 has been filed in the
0272 court. The application shall state:

0273 (1) The application provided for in section 8 has been filed;

0274 (2) the affiant's belief that the proposed patient is intoxicated
0275 or incapacitated by drugs;

0276 (3) because of the proposed patient's intoxication or incapac-
0277 ity, such person is likely to be injured or to injure others if not
0278 immediately detained.

0279 This order shall only be valid until the conclusion of the
0280 hearing held pursuant to section 12.

0281 (c) At any time after the hearing provided for in section 12,
0282 when the court has found at such hearing ~~by clear and convincing~~
0283 ~~evidence~~ that the proposed patient is intoxicated or incapacitated
0284 by drugs. This order shall be valid until the order for ~~care or~~
0285 treatment is executed.

0286 (d) No order of protective custody shall be issued pursuant to
0287 subsection (a) or (b) of this section until the court has held a
0288 hearing to determine whether there is probable cause to believe
0289 the allegations made pursuant to subsection (a) or (b) of this
0290 section. Such hearing shall be held with 48 hours of the filing of
0291 such application, excluding Sundays and legal holidays. The
0292 person against whom the application has been filed shall be
0293 present at such hearing unless the attorney for such person shall
0294 request that such person's presence be waived and the court finds
0295 that the person's presence at the hearing would be injurious to
0296 such person's welfare. The court shall enter in the record of the
0297 proceedings the facts upon which the court has found that the
0298 presence of the person at the hearing would be injurious to such
0299 person's welfare. Notwithstanding the foregoing provisions of
0300 this subsection, if the person against whom the application has
0301 been filed requests in writing to the court or to such person's
0302 attorney that such person be present at the hearing, then such
0303 person's presence cannot be waived.

0304 (e) If the person against whom the application has been filed

insert: A district court may issue an order of
protective custody

delete

delete

0305 is in custody pursuant to the provisions of section 3 or 4 at the
0306 time such application is filed, the court may order that such
0307 person remain in custody at a treatment facility, state institution
0308 or other suitable place until the conclusion of the hearing held
0309 pursuant to the provisions of this section. If the person against
0310 whom the application has been filed is not in custody at the time
0311 such application is filed, the court may order that such person be
0312 taken into custody and placed in a treatment facility, state insti-
0313 tution or other suitable place willing to receive such person until
0314 the conclusion of the hearing held pursuant to the provisions of
0315 this section.

0316 (f) The applicant and the person against whom the applica-
0317 tion has been filed shall be notified of the time and place of the
0318 hearing and afforded an opportunity to appear at the hearing, to
0319 testify and to present and cross-examine witnesses. If the person
0320 against whom the application has been filed has not retained an
0321 attorney, the court shall appoint an attorney for such person in the
0322 same manner as an attorney is appointed under the provisions of
0323 section 9. All persons not necessary for the conduct of the pro-
0324 ceedings may be excluded. The hearing shall be conducted in as
0325 informal a manner as may be consistent with orderly procedure
0326 and in a physical setting not likely to have a harmful effect on the
0327 person against whom the application has been filed. The court
0328 shall receive all relevant and material evidence which may be
0329 offered. If the applicant is not represented by counsel, the county
0330 or district attorney shall represent the applicant, prepare all
0331 necessary papers, appear at the hearing and present such evi-
0332 dence as the county or district attorney determines to be of aid to
0333 the court in determining whether or not there is probable cause to
0334 believe that the person against whom the application has been
0335 filed is a drug abuser or incapacitated by drugs and is likely to do
0336 physical injury to oneself or others if not immediately detained. If
0337 the court determines from the evidence that there is probable
0338 cause to believe that the person against whom the application has
0339 been filed is a drug abuser or incapacitated by drugs and is likely
0340 to do physical injury to oneself or others if not immediately
0341 detained, the court shall issue an order of protective custody;

0342 otherwise, the court shall terminate the proceedings.

0343 (g) The order of protective custody issued pursuant to provi-
0344 sions of this section may authorize a health officer, physician, law
0345 enforcement officer or other person as specified in the order to
0346 take the person against whom the application has been filed into
0347 custody and to transport and place such person in a designated
0348 public or private treatment facility or state institution or other
0349 suitable place willing to receive such person and may designate
0350 the place of detention, but no person shall be detained in protec-
0351 tive custody in a nonmedical facility used for the detention of
0352 persons charged with or convicted of a crime unless other facili-
0353 ties are not available. In lieu of such detention, the order of
0354 protective custody may allow the person against whom the ap-
0355 plication has been filed to be at liberty, subject to such conditions
0356 as the court may impose, pending the hearing provided for in
0357 section 12 or pending the execution of the order for care or
0358 treatment.

0359 Sec. 8. Any reputable person may file in the district court of
0360 the county of the proposed patient's residence or presence a
0361 verified application to determine whether the proposed patient is
0362 a drug abuser or incapacitated by drugs. The application shall
0363 state:

0364 (a) The applicant's belief that the proposed patient is a drug
0365 abuser who habitually lacks self-control as to the use of drugs and
0366 that the proposed patient: (1) Has threatened, attempted or in-
0367 flicted physical harm on such proposed patient or another and
0368 that unless committed is likely to inflict physical harm on such
0369 proposed patient or another; or (2) is incapacitated by drugs;
0370 however, a refusal to undergo voluntary treatment does not con-
0371 stitute, in and of itself, evidence of lack of judgment as to the
0372 need for treatment, and the facts upon which such beliefs are
0373 based;

0374 (b) the name, age, residence and present address of the pro-
0375 posed patient, if known to the applicant;

0376 (c) the name and address of the nearest relatives of the pro-
0377 posed patient, if known to the applicant, and if not known, that
0378 the applicant has made diligent inquiry to learn the name of such

0379 relatives;

0380 (d) the pecuniary condition of the proposed patient to the
0381 extent known by the applicant;

0382 (e) the name and address of the person, if any, having custody
0383 and control of the proposed patient if known to the applicant;

0384 (f) the names and addresses of witnesses by whom the truth of
0385 the application may be proved;

0386 (g) a request that the court make a determination that the
0387 proposed patient is a drug abuser or incapacitated by drugs and
0388 make one or more of the orders provided for in subsection (b) of
0389 section 7, in this section and in section 9.

0390 ~~Any such application may be accompanied, or the court may~~
0391 ~~require that such application be accompanied, by a statement in~~
0392 ~~writing of a physician stating that the physician has examined the~~
0393 ~~proposed patient and the results of the examination on the issue~~
0394 ~~of whether the proposed patient is a drug abuser or incapacitated~~
0395 ~~by drugs, or the district court may allow such application to be~~
0396 ~~accompanied by a verified statement by the applicant that the~~
0397 ~~proposed patient has refused to submit to an examination by a~~
0398 ~~physician.~~

0399 Sec. 9. Upon the filing of the application provided for in
0400 section 8, the district court shall issue the following:

0401 (a) An order fixing the time and place of the hearing on the
0402 application. The time designated in the order shall in no event be
0403 earlier than seven days or later than 14 days after the date of the
0404 filing of the application, unless advanced pursuant to section 10.
0405 In any case where the proposed patient is absent and the service
0406 of the notice on the proposed patient cannot be served because of
0407 the absence, then the time of absence shall not be included in
0408 computing the time of the expiration of the fourteen-day limita-
0409 tion above set out.

0410 (b) An order that the proposed patient appear at the time and
0411 place of the hearing. The proposed patient shall be present at the
0412 hearing, unless the attorney of such person shall request that such
0413 person's presence be waived and the court finds that the person's
0414 presence at the hearing would be injurious to the proposed
0415 patient's welfare. The court shall enter in the record of the

change to: Unless the court allows an application to be accompanied by a verified statement by the applicant that the person named in the application has refused to submit to an examination by a physician or psychologist, any such application shall be accompanied by a signed statement of a physician or psychologist stating the said physician or psychologist has examined the person for whom the application has been filed and the results of the examination on the issue of whether such person is incapacitated by drugs.

0416 proceedings the facts upon which the court has found that the
0417 presence of the person at the hearing would be injurious to such
0418 person's welfare. Notwithstanding the foregoing provisions of
0419 this subsection, if the person against whom the application has
0420 been filed requests in writing to the court or to such person's
0421 attorney that such person be present at the hearing, then such
0422 person's presence cannot be waived.

0423 (c) An order appointing an attorney to represent the proposed
0424 patient at all stages of the proceedings. The court shall give
0425 preference, in the appointment of the attorney, to any attorney
0426 who has represented the proposed patient in other matters if the
0427 court has knowledge of the prior relationship. The proposed
0428 patient shall have the right to engage an attorney of the proposed
0429 patient's own choice and, in such an event, the attorney ap-
0430 pointed herein shall be relieved of all duties by the court.

0431 (d) An order that the proposed patient shall appear at a time
0432 and place that is in the best interest of the patient to consult with
0433 the attorney for the proposed patient, which time shall be prior to
0434 the execution of the order for evaluation unless an order of
0435 protective custody has been issued and detention of the proposed
0436 patient thereunder is in a place outside the jurisdiction of the
0437 court.

0438 (e) A notice in the manner provided for in section 11.

0439 (f) An order for evaluation. Such order may be served on the
0440 proposed patient at the same time or after notice is given. It shall
0441 be served in the manner provided for in section 11. It shall order
0442 the proposed patient to submit to an evaluation and to undergo
0443 such evaluation at a public or private treatment facility, state
0444 institution, mental health clinic or physician designated by the
0445 court in the order. A public or private treatment facility or state
0446 institution shall receive and evaluate any proposed patient or-
0447 dered evaluated under this subsection (f). The order for evalua-
0448 tion shall require the examiner to prepare and submit to the court
0449 a report in writing of the evaluation at the time designated by the
0450 court in the order, but in no event later than three days prior to the
0451 date of the hearing provided for in section 12. In addition, such
0452 order shall state that the report also shall be made available only

0453 to counsel for the parties at least three days prior to such hearing.

0454 Such report shall state that the examiner has made an examination
0455 of the proposed patient and shall state the results of the exami-
0456 nation on the issue of whether the proposed patient is a drug
0457 abuser or incapacitated by drugs. Such order shall be issued
0458 unless the court determines that the statement of the physician, if
0459 any, filed with the application is a sufficient evaluation. Upon the
0460 filing of the application provided for in section 8, the district
0461 court may in its discretion authorize and order any law enforce-
0462 ment officer or other person designated in the order to take the
0463 proposed patient into custody and transport such patient forth-
0464 with before the court or at the earliest time the court is available at
0465 which time the court or an attorney appointed by the court shall
0466 explain to the proposed patient the nature of the proceedings and
0467 the rights of the proposed patient. If the proposed patient at this
0468 time consents in writing that the hearing not be set for ~~90~~ days 50 ————— change to 60
0469 that the court may make an order of referral, the court, in its
0470 discretion, may refer the proposed patient for a period of time not
0471 to exceed ~~90~~ days for short-term care or treatment in any of the 45 ————— change to 60
0472 following facilities:

0473 (1) A public or private treatment facility or state institution;

0474 (2) any facility of the United States government available for
0475 the care or treatment of a drug abuser or person incapacitated by
0476 drugs;

0477 (3) other facilities for care or treatment except that an order for
0478 care or treatment in any of the facilities described in paragraphs
0479 (2) and (3) of this subsection (f) shall be conditioned upon the
0480 consent of such facility.

0481 (g) An order for the disclosure of all records, reports, evalua-
0482 tions or other treatment documents that are deemed necessary for
0483 the proceedings before the court. Such order shall be subject to
0484 the limitations established by section 26.

0485 (h) Upon the issuance by the court of the referral order as
0486 provided in this section, the court may in its discretion issue only
0487 those mandatory orders provided herein as the court may deem
0488 necessary and proper and shall not be subject to the qualifications
0489 for issuing a referral order as provided in section 13.

0490 Sec. 10. At or after the filing of the application provided for
0491 in section 8 and prior to the hearing provided for in section 12,
0492 the court may issue any of the following orders:

0493 (a) An order of protective custody. The order shall be subject
0494 to the requirements and limitations of section 7.

0495 (b) An order for investigation. Such investigation shall cover
0496 the character, family relationships, past conduct, whether or not
0497 the proposed patient is likely to be injured or to injure others if
0498 allowed to remain at liberty and other pertinent factors. At the

0499 ~~direction of the court, any person appointed by the court shall~~
0500 ~~make such investigation.~~ The person who conducts the inves-
0501 tigation shall promptly make a report to the court, in writing,
0502 which report shall be made available only to counsel for the
0503 parties at least three days prior to such hearing.

0504 (c) An order of continuance. For good cause shown, one
0505 continuance may be granted for no longer than seven days,
0506 provided that such limitations do not apply to a request for an
0507 order of continuance made by the proposed patient.

0508 (d) An order of advancement. Upon request by the proposed
0509 patient or the proposed patient's attorney, the district court shall
0510 advance the date of hearing to as early a date as is practicable.

0511 Sec. 11. The notice required by subsection (e) of section 9
0512 shall be given to the proposed patient named in the application,
0513 the attorney appointed pursuant to subsection (c) of section 9, and
0514 to such other persons as the court shall direct. (a) The notice shall
0515 state:

0516 (1) That an application has been filed, alleging that the pro-
0517 posed patient is a drug abuser or person incapacitated by drugs
0518 and requesting that the court order care or treatment;

0519 (2) the time and place of the hearing and whether the pro-
0520 posed patient shall be present;

0521 (3) the name of the attorney appointed to represent the pro-
0522 posed patient and the time and place where the proposed patient
0523 shall consult with such attorney;

0524 (4) that the proposed patient has a right to demand a hearing
0525 before a jury.

0526 (b) The court may order any of the following to serve the

change to: Upon the order

change to: the person appointed to conduct

0527 notice:

0528 (1) The physician currently administering to the proposed
0529 patient, provided the physician consents;

0530 (2) the head of the local public or private treatment facility or
0531 state institution, or the designee of such person;

0532 (3) the local health officer or the designee of such person;

0533 (4) the secretary of social and rehabilitation services or the
0534 designee of the secretary;

0535 (5) any law enforcement officer.

0536 The notice shall be served personally on the proposed patient
0537 and the attorney appointed pursuant to subsection (c) of section 9
0538 not less than five days prior to the date of the hearing and
0539 immediate return thereof shall be made. Notice to all other
0540 persons shall be in such manner and within such time as the court
0541 shall direct.

0542 Sec. 12. (a) The hearing shall be held at the time and place
0543 specified in the court's order unless the proposed patient has
0544 requested a continuance as provided in section 8 or section 10.
0545 The hearing shall be held before the court unless the proposed
0546 patient, at least 48 hours prior to the time of the hearing, requests
0547 in writing a hearing before a jury.

0548 (b) The jury, if one is requested, shall consist of six persons
0549 and shall be selected as provided by law.

0550 (c) Within 48 hours immediately prior to and during the
0551 hearing provided for in this section, a physician may not admin-
0552 ister to a proposed patient any medication or therapy which will
0553 alter such proposed patient's mental state in such a way as to
0554 adversely affect such patient's judgment or hamper such patient
0555 in preparing for or participating in the hearing, unless such
0556 medication or therapy is necessary to sustain life or protect the
0557 patient or others. The court shall enter an order directing the
0558 physician to present to the court a record of all such medications
0559 or therapy, or both, that have been administered to the proposed
0560 patient during the 48 hours immediately prior to the hearing.

0561 (d) The applicant and the proposed patient shall be afforded
0562 an opportunity to appear at the hearing, to testify and to present
0563 and cross-examine witnesses. All persons not necessary for the

insert: in which the proposed patient is present.

insert: The public or private treatment facility
or the state institution shall cooperate in the
service of notice under this section.

insert: or psychologist

insert: or psychologist

0564 conduct of the proceedings ~~may~~ be excluded. The hearings shall ~~change to:~~ shall
 0565 be conducted in as informal a manner as may be consistent with
 0566 orderly procedure and in a physical setting not likely to have a
 0567 harmful effect on the proposed patient. The court shall receive all
 0568 relevant and material evidence which may be offered, including
 0569 the testimony or written findings and recommendations of the
 0570 hospital, clinic or physician who has examined or evaluated the
 0571 proposed patient and the testimony and written findings and
 0572 recommendations of the investigators pursuant to subsection (b)
 0573 of section 10. Such evidence shall not be privileged for the
 0574 purpose of this hearing.

0575 (e) If the applicant is not represented by counsel, the county
 0576 or district attorney shall represent the applicant, prepare all
 0577 necessary papers, appear at the hearing and present such evi-
 0578 dence as the county or district attorney shall determine to be of
 0579 aid to the court in determining whether the proposed patient is a
 0580 drug abuser or incapacitated by drugs.

0581 (f) If, upon the completion of the hearing, the court finds by
 0582 clear and convincing evidence that the proposed patient is a drug
 0583 abuser or incapacitated by drugs, the court shall order care or
 0584 treatment for such person at any of the following facilities:

0585 (1) A public or private treatment facility or state institution;
 0586 (2) any facility of the United States government available for
 0587 the care or treatment of a drug abuser or person incapacitated by
 0588 drugs;

0589 (3) other facilities for care or treatment except that an order for
 0590 care or treatment in any of the facilities described in paragraphs
 0591 (2) and (3) is conditioned upon the consent of such facility.

0592 (g) When the court orders care or treatment in facilities de-
 0593 scribed in (2) or (3), it shall retain jurisdiction to modify, change
 0594 or terminate such order.

0595 (h) If, upon the completion of the hearing the court ~~finds that~~ insert: or jury
 0596 it has not been shown by clear and convincing evidence that the
 0597 proposed patient is a drug abuser or person incapacitated by
 0598 drugs, the court shall enter the findings in the record and shall by
 0599 an appropriate order terminate the proceedings.

0600 Sec. 13. (a) The proposed patient, at any time prior to the

0601 hearing provided for in section 12, may request, in writing, that
 0602 the hearing be continued for ~~90~~ days so that the court may make change to: 60
 0603 an order of referral. Upon receipt of such request, the court may
 0604 order the referral of the proposed patient for a period of time until
 0605 treatment is completed but not to exceed ~~90~~ days, for short-term change to: 60
 0606 care or treatment, to any of the following facilities:

0607 (1) A public or private treatment facility or state institution;
 0608 (2) any facility of the United States government available for
 0609 the care or treatment of a drug abuser or person incapacitated by
 0610 drugs;

0611 (3) other facilities for care or treatment except that an order for
 0612 care or treatment in any of the facilities described in paragraph (1)
 0613 or (2) of this subsection (a) is conditioned upon the consent of
 0614 such facility.

0615 (b) The court may not issue an order of referral unless:

0616 (1) The report of the examiner, provided for in subsection (f)
 0617 of section 9 or the statement of the physician, if one has been filed insert: or psychologist
 0618 with the application and found by the court to be a sufficient
 0619 evaluation, states that the proposed patient is a drug abuser or
 0620 incapacitated by drugs;

0621 (2) the attorney representing the proposed patient has filed a
 0622 statement, in writing, stating that the attorney has explained to
 0623 the proposed patient the nature of the order of referral and the
 0624 right of the proposed patient to a hearing before a court or jury to
 0625 determine whether the proposed patient is a drug abuser or
 0626 incapacitated by drugs.

0627 (c) Any order of referral under this section shall include an
 0628 order for the disclosure, preparation and submission of written
 0629 findings and recommendations of the treatment facility or state
 0630 institution.

0631 (d) Any proposed patient who has been referred for care or
 0632 treatment under this section may be accepted for voluntary ad-
 0633 mission in a public or private treatment facility or state institu-
 0634 tion, or if referred to a public or private treatment facility or state
 0635 institution, may be discharged by such facility pursuant to sec-
 0636 tion 19. When the proposed patient has been admitted as a
 voluntary patient or discharged, the public or private treatment

0638 facility or state institution shall file written notice of the change
0639 in status of the proposed patient in the court which had ordered
0640 the referral. The filing of either notice shall constitute a dismissal
0641 of the pending application.

0642 (e) Unless the proposed patient has been accepted as a vol-
0643 untary patient by a public or private treatment facility or state
0644 institution or discharged by a public or private treatment facility
0645 or state institution, the facility treating the proposed patient shall,
0646 not later than 10 days prior to the expiration date of the referral
0647 period, file a written report of its findings and recommendations
0648 with the court. The court shall then set the date for the hearing.
0649 Such hearing date shall not be later than the expiration date of the
0650 referral period, unless continued for good cause shown.

0651 Sec. 14. All orders of referral or for care or treatment in a
0652 public treatment facility or state institution shall be made on the
0653 form prescribed by the secretary. Admission shall be to the public
0654 treatment facility or state institution previously designated by the
0655 secretary to accept persons from the area of the court's jurisdic-
0656 tion, and at a time specified by the head of the public treatment
0657 facility or state institution which shall be not more than five days
0658 after the date of the order. Notice of the order shall be given
0659 immediately to the designated public treatment facility or state
0660 institution.

0661 Sec. 15. All orders of protective custody, referral or care or
0662 treatment shall authorize a suitable person to transport the indi-
0663 vidual named in the order to the place of detention or care or
0664 treatment specified in the order. All such orders shall be served
0665 by the person transporting the individual named in the order
0666 upon the person in charge of the place of detention or care or
0667 treatment or such individual's designee and due return thereof
0668 made to the court. A female being transported to such place shall
0669 be accompanied by a female attendant, unless she is accompanied
0670 by an adult relative. An individual shall not be transported in a
0671 marked police car or sheriff's car if other means of transportation
0672 are available. The least amount of restraint necessary shall be
0673 used in transporting such person.

0674 Sec. 16. (a) An order of referral or care or treatment to a

0675 public treatment facility or state institution shall be executed
76 within five days by the admission of the proposed patient or
0677 involuntary patient to a public treatment facility or state institu-
0678 tion. An order of referral or care or treatment to a private treat-
0679 ment facility or other facility for care or treatment which is listed
0680 on the register maintained by the secretary under subsection (b)
0681 shall be executed within five days, or as soon thereafter as
0682 possible, by admission of the proposed patient or involuntary
0683 patient to the facility. An order of referral or care or treatment to a
0684 private treatment facility which is not listed on the register
0685 maintained by the secretary under subsection (b) or other facility
0686 for care or treatment which is not listed on the register maintained
0687 by the secretary under subsection (b) shall be executed, as soon as
0688 such treatment facility or other facility for care or treatment
0689 consents, by admission of the proposed patient or involuntary
0690 patient to the private treatment facility or other facility for care or
0691 treatment.

0692 (b) The secretary shall maintain a register of each private
0693 treatment facility or other facility for care or treatment which
0694 agrees to accept proposed patients or involuntary patients. The
0695 secretary shall provide a current copy of the register to each
0696 district court in this state not less than twice during any calendar
0697 year.

0698 Sec. 17. (a) After the application provided for in section 8 or
0699 section 18 is filed, the district court at any time, on its own motion
0700 or upon the written request of any person, may transfer the venue
0701 of any case to any of the following district courts under the
0702 following conditions:

0703 (1) When the application is filed in the county of the resi-
0704 dence of the patient:

0705 (A) To the county where the patient is being detained in a
0706 public or private treatment facility or state institution under the
0707 authority of an order issued pursuant to section 7, section 12 or
0708 section 13;

0709 (B) to any other county designated by the court, provided that
0710 the patient has made a request for a change of venue and the
11 district court finds that the patient cannot obtain a fair hearing in

0712 the county of the patient's residence.

0713 (2) When the application is filed in the county of the presence
0714 of the patient:

0715 (A) To the county of the residence of the patient;

0716 (B) to the county where the patient is being detained in a
0717 public or private treatment facility or state institution under the
0718 authority of an order issued pursuant to section 7, section 12 or
0719 section 13;

0720 (C) to any other county designated by the court, provided that
0721 the patient has made a request for a change of venue and the
0722 district court finds that the patient cannot obtain a fair hearing in
0723 the county of the patient's presence.

0724 (b) If any patient is in a public or private treatment facility or
0725 state institution the district court of the county in which the
0726 treatment facility or state institution is located may not transfer
0727 venue under any circumstances unless the patient has requested
0728 such transfer.

0729 (c) When any order changing venue is issued, the district
0730 court issuing such order shall transmit to the district court to
0731 which venue was changed a certified copy of all pleadings and
0732 orders in the case. The district court issuing such order shall
0733 transmit to the district court of the residence of the proposed
0734 patient a statement of all court costs incurred by the county of the
0735 district court issuing such order and a certified copy of all
0736 pleadings and orders in the case.

0737 (d) Any district court to which venue is transferred shall
0738 proceed in the case as if the application had been originally filed
0739 therein and shall cause notice of the change of venue to be given
0740 to the persons and in the manner provided for in section 11. The
0741 court need not issue the order for evaluation pursuant to subsection
0742 (f) of section 9 if such order has previously been issued.

0743 (e) Any district court to which venue is transferred shall
0744 transmit a statement of any court costs incurred and a certified
0745 copy of all pleadings and orders in the case to the district court of
0746 the county of the residence of the patient.

0747 Sec. 18. (a) Any involuntary patient or any person on behalf
0748 of an involuntary patient may file a verified application for

add: or to the county designated by section 29.

0749 discharge in the district court that issued the order for care or
 0750 treatment. The application shall state:

- 0751 (1) The name of the involuntary patient;
 0752 (2) the name and address of the nearest relatives of the invol-
 0753 untary patient, if known to the applicant;
 0754 (3) a request for discharge.

0755 Such an application shall not be filed within ~~six months from~~ change to: three
 0756 the date of the original order for care or treatment nor more often
 0757 than once every ~~six months~~ thereafter. change to: three

0758 Upon the filing of the application, the district court shall
 0759 proceed with a hearing in the same manner and with the same
 0760 powers as if an application, pursuant to section 8, had been filed
 0761 in the court. The court shall not issue the orders provided for in
 0762 subsection (f) of section 9 and subsection (b) of section 10 but
 0763 shall give notice of the time and place of the hearing to the
 0764 treatment facility, state institution or other facilities for care or
 0765 treatment to which the involuntary patient was ordered for care or
 0766 treatment.

0767 (b) Upon the completion of the hearing, if the district court
 0768 finds by clear and convincing evidence that the involuntary
 0769 patient continues to be a drug abuser or a person incapacitated by
 0770 drugs, the district court shall order either that the original order
 0771 for care or treatment continue or that a new order for care or
 0772 treatment be issued. If the court finds that it has not been shown
 0773 by clear and convincing evidence that the patient continues to be
 0774 a drug abuser or incapacitated by drugs, it shall discharge the
 0775 patient. A copy of the court's order shall be sent by mail to the
 0776 involuntary patient and to the treatment facility, state institution
 0777 or other facilities for care or treatment to which the involuntary
 0778 patient had been ordered for care or treatment.

0779 Sec. 19. (a) The commissioner of mental health and retarda-
 0780 tion services may transfer any patient from any institution under
 0781 the control of such commissioner to any other such institution
 0782 whenever the commissioner deems it to be in the best interest of
 0783 the patient.

0784 (b) When any proposed patient or involuntary patient has
 0785 been ordered to any treatment facility or state institution on

0786 referral or for care or treatment, the head of the treatment facility
0787 or state institution shall discharge such patient when such patient
0788 is no longer in need of care or treatment.

0789 (c) The head of the treatment facility or state institution may
0790 release any patient on convalescent status when the head of the
0791 treatment facility or state institution believes that such release is
0792 in the best interest of the patient.

0793 The treatment facility or state institution shall continue to have
0794 the responsibility to formulate a plan of treatment for the well-
0795 being of any patient released on convalescent status. Such re-
0796 sponsibility shall also include a plan of care or treatment and the
0797 place where it shall be received, notwithstanding any law autho-
0798 rizing the patient or the patient's guardian, if any, to determine
0799 such place. The head of the treatment facility or state institution
0800 shall have the authority to change the plan or place of care or
0801 treatment whenever the head of the treatment facility or state
0802 institution deems it necessary for the welfare of the patient. Such
0803 authority shall include the right to revoke the release on conva-
0804 lescent status and to order the patient readmitted to the treatment
0805 facility or state institution, as applicable. The head of the treat-
0806 ment facility or state institution may authorize and order any law
0807 enforcement officer or other person to take into custody and
0808 transport the patient to a treatment facility, state institution or
0809 other facility for care or treatment. Prior to the end of the first year
0810 on convalescent status, and not less often than annually thereafter
0811 while an involuntary patient is on convalescent status, the head of
0812 the treatment facility or state institution shall reexamine the facts
0813 relating to the care or treatment of the involuntary patient on
0814 convalescent status.

0815 (d) Nothing in this section shall be construed to amend or
0816 modify or repeal any law relating to the confinement of persons
0817 charged with or convicted of a criminal offense.

0818 Sec. 20. The head of the treatment facility or state institution
0819 shall notify, in writing, the district court, which has ordered the
0820 care or treatment of the involuntary patient or the referral of the
0821 proposed patient, of the patient's discharge or release on conva-
0822 lescent status. When a notice of discharge is received, the court

0823 shall file the same in the record, which shall terminate the
0824 proceedings. When a notice of release on convalescent status is
0825 received, the court shall file the same in the records.

0826 Sec. 21. If any patient leaves the place of care or treatment
0827 without the authority of the head of the treatment facility or state
0828 institution, the head of the treatment facility or state institution
0829 may authorize and order, in writing, any law enforcement officer
0830 or other person to take such patient into custody and transport
0831 such patient to such place as may be directed by the head of the
0832 treatment facility or state institution. The expense of such trans-
0833 portation shall be borne by the treatment facility or state institu-
0834 tion.

0835 Sec. 22. Every patient shall receive humane care to the extent
0836 that facilities, equipment and personnel are available and medi-
0837 cal treatment consistent with accepted medical ethics and prac-
0838 tices.

0839 Sec. 23. Restraints shall not be applied to a patient unless it is
0840 determined by ~~the head of the treatment facility or state institu-~~
0841 ~~tion or a member of the medical staff~~ to be required by the
0842 patient's medical needs. ~~The head of the treatment facility or state~~
0843 ~~institution or a member of the medical staff~~ shall sign a statement
0844 explaining the medical necessity for the use of any restraints and
0845 shall make such statement a part of the ~~clinical~~ record of such
0846 patient.

change to: a physician or psychologist.

change to: treatment

change to: physician or psychologist

change to: treatment

0847 Sec. 24. (a) Every patient detained in a treatment facility,
0848 state institution or other facility for care or treatment shall have
0849 the absolute right to communicate by letter with the secretary or
0850 any other person in the department of social and rehabilitation
0851 services, the head of the treatment facility, the head of the state
0852 institution, any court, physician or attorney. The head of the
0853 treatment facility or state institution may impose reasonable rules
0854 and regulations on any patient concerning communication by
0855 letter or otherwise with any person or agencies and concerning
0856 the right to receive visitors. Any patient shall have the right to be
0857 visited by any physician or attorney at any reasonable hour.

0858 (b) Any person willfully depriving any patient of the rights
0859 protected by this section shall be guilty of a class C misdemeanor.

0860 Sec. 25. Except as limited by this act, a person shall not lose
0861 rights as a citizen, property rights or legal capacity by reason of
0862 being a patient. The head of the treatment facility or state insti-
0863 tution may make reasonable rules and regulations concerning the
0864 exercise of such rights by the patients in the treatment facility or
0865 state institution, respectively.

0866 Sec. 26. (a) The district court, hospital or medical records of
0867 any patient or former patient that are in the possession of any
0868 district court, public or private treatment facility, state institution
0869 or other facility for care or treatment shall be privileged to the
0870 patient and shall not be disclosed except as (1) otherwise pro-
0871 vided in this act, or (2) under any of the following conditions:

0872 (A) Upon the consent, in writing, of the patient or former
0873 patient, or if the patient or former patient is under 16 years of age,
0874 by a parent of the patient or former patient, or if the patient or
0875 former patient has a guardian, by the guardian. However, the
0876 head of the treatment facility or state institution or the head of the
0877 other facility for care or treatment who has the records may refuse
0878 to disclose such records if the head of such facility or state
0879 institution has stated, in writing, that such disclosure will be
0880 injurious to the welfare of the patient or former patient.

0881 (B) Upon a bona fide medical emergency without the consent
0882 of the patient or former patient.

0883 (C) Upon the directive of the secretary to the committee
0884 disclosure may be made from patients' records for purposes of
0885 research into the causes and treatment of drug abuse. The infor-
0886 mation furnished under this subsection shall not be published in
0887 any way which may disclose a patient's name or other identifying
0888 information.

0889 (D) Upon the order of any court of record pursuant to subpart
0890 (E) of part 2 of volume 42 of the code of federal regulations in
0891 effect on the effective date of this act.

0892 (b) Any person willfully violating this section shall be guilty
0893 of a class C misdemeanor.

0894 Sec. 27. Any person acting in good faith and without negli-
0895 gence shall be free from all liability, civil or criminal, which
0896 might arise out of acting pursuant to this act. Any person who for

0897 a corrupt consideration or advantage, or through malice, shall
 0898 make or join in making or advise the making of any false appli-
 0899 cation, report or order provided for in this act shall be guilty of a
 0900 class B misdemeanor.

0901 Sec. 28. Neither an order of referral nor an order for care or
 0902 treatment made pursuant to this act shall imply an adjudication of
 0903 incapacity, nor shall either order create any presumption that the
 0904 proposed patient or involuntary patient is an incapacitated per-
 0905 son.

0906 Sec. 29. In each proceeding the court shall allow and order
 0907 paid to any individual or institution as part of the costs thereof a
 0908 reasonable fee and expenses for any professional services ordered
 0909 performed by the court pursuant to this act, other than those
 0910 performed by any individual or institution under the jurisdiction
 0911 of the secretary, but including the fee of counsel for the patient
 0912 when counsel is appointed by the court. Other costs and fees shall
 0913 be allowed and paid as are allowed by law for similar services in
 0914 other cases. The costs shall be taxed to the estate of the patient, to
 0915 those bound by law to support such patient or to the county of the
 0916 residence of the patient as the court having venue shall direct.
 0917 Any district court receiving a statement of costs from another
 0918 district court shall forthwith approve the same for payment out of
 0919 the general fund of its county, except that it may refuse to approve
 0920 the same for payment only on the grounds that the patient is not a
 0921 resident of its county. In such case it shall transmit the statement
 0922 of costs to the secretary who shall determine the question of
 0923 residence and certify its findings to each district court. If the
 0924 claim for costs is not paid within 30 days after such certification,
 0925 an action may be maintained thereon by the claimant county in
 0926 the district court of the claimant county against the debtor
 0927 county. The findings made by the secretary as to the residence of
 0928 the patient shall be applicable only to the assessment of costs.
 0929 Any county of residence which pays from its general fund court
 0930 costs to the district court of another county may recover the same
 0931 in any court of competent jurisdiction from the estate of the
 0932 patient or from those bound by law to support the patient, unless
 33 the court finds that the proceedings in which such costs were

insert: or nexus

add: If the secretary is unable to determine the question of residence, the secretary then shall determine which county has the closest nexus to the patient. The secretary shall consider the number of contacts of relationships, origin of the involuntary commitment process, and such other matters the secretary deems appropriate in determining the county of nexus.

add: The secretary's findings shall not be subject to further appeal.

0934 incurred were instituted without probable cause and not in good
0935 faith.

0936 Sec. 30. In the event of the sudden or unexpected death of a
0937 patient in a treatment facility or state institution the head of the
0938 treatment facility or state institution shall give notice of such
0939 death to the county or district attorney and the coroner. Notice of
0940 the death of any proposed patient or involuntary patient shall be
0941 given to the district court having issued the order of referral or
0942 care or treatment, which notice shall include the time, place and
0943 cause of death.

0944 Sec. 31. The provisions of law enabling the state to secure
0945 reimbursement for any such items of cost, applicable to involun-
0946 tary patients in state hospitals, shall apply with equal force in
0947 respect to each item of expense incurred by the state in connec-
0948 tion with the commitment, care, custody and treatment of any
0949 person committed to the secretary or to any institution main-
0950 tained by the state. Voluntary patients may be required to pay the
0951 costs of their subsistence, care and treatment.

0952 Sec. 32. Nothing in this act shall relieve any person from civil
0953 liability or criminal liability and prosecution for any act commit-
0954 ted while under the influence of drugs or incapacitated by drugs.

0955 Sec. 33. This act shall be known and may be cited as the
0956 treatment act for drug abusers.

0957 Sec. 34. If any provision of this act or the application thereof
0958 to any person or circumstances is held invalid, the invalidity shall
0959 not affect other provisions or applications of the act which can be
0960 given effect without the invalid provision or application, and to
0961 this end the provisions of this act are severable.

0962 Sec. 35. This act shall take effect and be in force from and
0963 after its publication in the statute book.

1-18-84
Attach. #5

**Kansas
Citizens
Advisory
Committee on Alcohol and other Drug Abuse**

P.O. BOX 4052 TOPEKA, KANSAS 66604

January 17, 1984

Senator Elwaine Pomeroy
Chairman - Senate Judiciary Committee
Kansas State Capitol
Topeka, Kansas

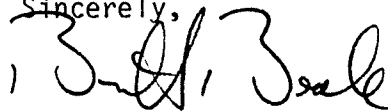
Re: SB 232 "Drug Commitment"

Dear Committee Member,

The Kansas Citizens Advisory Committee on Alcohol and other Drug Abuse strongly supports the need for "Drug Commitment" legislation in Kansas. Local Alcohol and Drug programs currently lack the mechanism to deal with drug addiction problems effectively.

We are aware of the proposed changes offered by SRS/ADAS and support these amendments.

Sincerely,



Bruce Beale
Chairman

Attch. 5

1-18-84

Attach. # 6

KANSAS ALCOHOLISM AND DRUG ABUSE COUNSELOR'S ASSOCIATION

TESTIMONY

TO: Senate Judiciary Committee

FROM: Glenn Leonardi, Representing the Kansas Alcoholism and Drug Abuse Counselor's Association *g.l.*

SUBJECT: Senate Bill No. 232

DATE: January 18, 1984

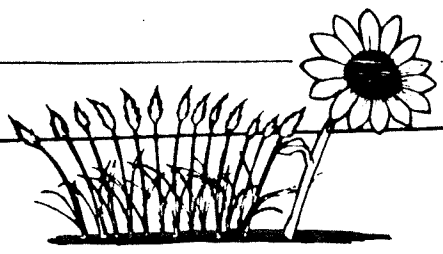
I appear before you today on behalf of the Kansas Alcoholism and Drug Abuse Counselor's Association (KADACA) to voice our association's support of Senate Bill No. 232.

Alcoholism and chemical dependency are illnesses which follow similar progressions. It follows that the circumstances and channels that assist the alcoholic in receiving desperately needed health services also apply to the chemical dependent person. Senate Bill No. 232 is a derivative of the alcoholism commitment statutes that have been tried and proven to be extremely effective and successful.

KADACA respectfully requests your consideration and ultimate passage of Senate Bill No. 232.

Atch. 6

1-18-84
Attach. #7



Kansas Association of Alcohol and Drug Program Directors

January 16, 1984

TO: Elwaine Pomeroy, Chairman, Senate Judiciary Committee
FROM: George Heckman, Chairman, KAADPD Legislative Committee *TH*
RE: SB 232

The Kansas Association of Alcohol and Drug Program Directors represents forty five (45) agencies providing alcohol and drug services in our state. These agencies represent the continuum of services. Services include, prevention, treatment and alcohol and drug safety action programs in a variety of settings.

Our Association strongly supports SB 232. As you are well aware, Kansas presently has a committment procedure for both alcoholism and mental health. SB 232 closely follows the mechanism of the existing committment procedures in these two areas and provides similar intervention for drug abusers.

Our Association has supported drug abuse committment for several years. Our member agencies periodically have requests from concerned parents, families and law enforcement officials about how to help a drug abuser who is harmful to him or herself or others. Our Association feels that action on this measure is long overdue.

Atch. 7