

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

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

12:15 ~~xxx~~/p.m. on February 28, 1984 in room 519-S of the Capitol.

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

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

Conferees appearing before the committee:

Mike Flyzik, SRS/Alcohol and Drug Abuse Services

Senate Bill 794 - Docket and other fees for probate proceedings.

Senator Feleciano moved to amend the bill to include the content of House Bill 2055, concerning court fees for Sedgwick County law library. Senator Winter seconded the motion, and the motion carried. Senator Mulich moved to amend the bill to include Wyandotte County in the last amendment; Senator Winter seconded the motion, and the motion carried. The chairman noted the fiscal effect by deleting the add on provisions would be fiscally neutral. Senator Mulich moved to report the bill favorably as amended; Senator Winter seconded the motion. Senator Winter made a substitute motion to amend the bill as proposed in the balloon copy. Senator Gaar seconded the motion, and the motion carried. Senator Winter moved to report the bill favorably as amended; Senator Mulich seconded the motion, and the motion carried.

Senate Bill 232 - Treatment act for drug abusers.

A copy of proposed amendments by Alcohol and Drug Abuse Services were passed out to committee members (See Attachment No. 1). Mike Flyzik was recognized to answer questions of the committee concerning the proposals. Senator Mulich moved to amend the bill by adopting the proposed amendments on page 2 of the balloon copy of the bill. Senator Burke seconded the motion, and the motion carried. Senator Mulich moved to amend the bill by adopting the proposals on page 4 of the balloon copy; Senator Winter seconded the motion, and the motion carried. Senator Mulich moved to amend the bill by adopting the proposal on page 5 of the balloon. Senator Winter seconded the motion, and the motion carried. Senator Gaar moved to amend the bill by adopting the suggestions on page 6, with the exception of deleting the word "reputable", remove "provided however" in line 222, and in Subsection (d) remove the criminal immunity and insert "in a civil action". Senator Mulich seconded the motion, and the motion carried. Senator Mulich moved to amend the bill by adopting the proposed amendments on page 7 of the balloon; Senator Winter seconded the motion, and the motion carried. Senator Mulich moved to amend the bill by adopting the proposals on page 8 and include the language "clear and convincing evidence"; Senator Winter seconded the motion, and the motion carried. Senator Mulich moved to amend the bill by adopting the proposal on page 10, but leave in the word "reputable". Senator Winter seconded the motion, and the motion carried. Senator Mulich moved to amend the bill by adopting the proposals on page 11; Senator Winter seconded the motion, and the motion carried. Senator Mulich moved to amend the bill by adopting the proposals on page 12; Senator Winter seconded the motion, and the motion carried. Senator Mulich moved to amend the bill by adopting the proposals on page 13; Senator Winter seconded the motion, and the motion carried. Senator Mulich moved to amend

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARYroom 519-S, Statehouse, at 12:15 ~~xxx~~/p.m. on February 28, 1984Senate Bill 232 continued

the bill by adopting the proposals on page 14 of the balloon copy; Senator Winter seconded the motion, and the motion carried. Senator Gaar moved to amend the bill to adopt the proposals on page 15, but do not adopt changing "may" to "shall"; Senator Mulich seconded the motion, and the motion carried. Senator Mulich moved to amend the bill to adopt the proposals on page 16 of the balloon; Senator Winter seconded the motion, and the motion carried. Senator Mulich moved to amend the bill to adopt the proposals on page 17; Senator Winter seconded the motion, and the motion carried. Senator Burke moved to amend the bill by providing if the county residence cannot be determined, the state will pick up the costs; Senator Werts seconded the motion, and the motion carried. Senator Mulich moved to amend the bill by adopting the proposal on page 21 of the balloon; Senator Winter seconded the motion, and the motion carried. Senator Mulich moved to amend the bill as proposed on page 12; Senator Winter seconded the motion, and the motion carried. Senator Winter moved to amend the bill in line 287 by limiting the time to 72 hours; Senator Burke seconded the motion, and the motion carried. Senator Mulich moved to report the bill favorably as amended; Senator Feleciano seconded the motion, and the motion carried.

Senate Bill 795 - Judicial council recommendations relating to court of appeals.

Senator Winter noted when he went into the ad hoc committee he was skeptical that was the way to solve the backlog problem, but he is convinced this is all that can be done to solve the problem. Senator Gaar stated he felt the same way as Senator Winter. Senator Gaar moved to amend the bill to provide the salary of the Court of Appeals would be fifteen hundred dollars less than the Supreme Court. There would be a seventy-five hundred dollars differential between the trial court and the appellate court. Senator Feleciano seconded the motion. Following considerable committee discussion, Senator Hess made a substitute motion to amend the bill to provide the judges of the Supreme Court receive one thousand dollars per year less than the Chief Justice. The members of the Court of Appeals will receive fifteen hundred dollars less than the members of the Supreme Court, but the Chief Judge will receive one thousand dollars more than members of the Court of Appeals. Senator Gaar seconded the motion, and the motion carried. Senator Hess moved to amend the bill to set the Chief Justice salary at sixty thousand dollars a year and build from that basis to set the other salaries. Senator Gaar seconded the motion, and the motion carried. Senator Hess moved to amend the bill to provide the salary of the district court judges be ten thousand dollars less than the Chief Justice, or nine thousand dollars less than the Supreme Court, and include the cost of living increase. Senator Steineger seconded the motion, and the motion carried. Senator Burke requested his "pass" vote be recorded in the minutes on this amendment. Senator Burke moved the newly appointed judges would take office upon appointment to help the backlog. Senator Winter seconded the motion, and the motion carried. Senator Winter moved to amend the bill in Section 3, concerning the method of retaining sitting judges. Senator Steineger seconded the motion, and the motion carried. Senator Winter moved to report the bill favorably as amended; Senator Gaar seconded the motion, and the motion carried. Senator Feleciano requested his "no" vote be recorded in the minutes.

The meeting adjourned.

2-28-84
12:15 P.M.

GUESTS

SENATE JUDICIARY COMMITTEE

NAME	ADDRESS	ORGANIZATION
Michael Flynn	Topeka	SRS/ADAS
Jim McFadden	Topeka	SRS/ADAS
Jerry Sloan	Topeka	Off. of Jud. Admin.
Berna Doty	Alma	Chief Dist Court
Evelyn A. Bowers	Ostalewska	KADCCA
Marjorie Van Buren	Topeka	OJA
Matt Lynch	Topeka	Judicial Council
Dave Frank	'	UPI

2-2-84

12:15 13

RATIONALE FOR AMENDMENTS TO SB 232

Attach. #1

MC {

- P. 2 Lines 47 - 48 To be consistent with MI commitment statutes.
- P. 2 Line 58 & Lines 60 - 63 & Lines 64 - 65 The "Informal patient" does not apply to drug treatment programing.
- P. 2 Line 65 Clean up language.
- P. 4 Line 124 Psychologists, along with physicians, should have the ability to determine if a person is incapacitated or a danger to self or others because of drug abuse/dependency.
- P. 4 Lines 126 - 129 Clean up language. To be consistent with MI commitment statutes.
- P. 4 Line 140 & Lines 142 - 155 Clean up language.
- P. 5 Lines 156 - 158 Clean up language.
- P. 5 Lines 163 - 189 To be consistent with MI commitment statutes.
- P. 6 Lines 206 - 207 To be consistent with MI commitment statutes.
- P. 6 Line 208 No definition of "reputable". Not needed.
- P. 6 Lines 217 - 218 To be consistent with MI commitment statutes.
- P. 6 Line 219 Clean up language/adds psychologist.
- P. 6 Line 220 "Delete" and "Add" are clean up. The change to 72 hours gives more time for an examination to be valid and therefore one more day of time to accomplish the examination.
- P. 6 Line 222 In the rural areas of Kansas it is hard to accomplish all the requirements within the currently required 48 hours. This will provide not more than 5 days for the performing of the examination by a physician or psychologist after the filing of the application.
- P. 6 Line 228 To be consistent with MI commitment statutes.
- P. 7 Line 249 Clean up language (in current alcohol commitment statute).
- P. 7 Line 261 To be consistent with MI commitment statutes.
- P. 8 Line 278 Clean up language and clarity.
- P. 8 Lines 279 - 286 Clean up language.

Atch. 1

- P. 8 Lines 287 - 288 Gives courts, especially in rural areas, sufficient time to hold this hearing and still protect the rights of the proposed patient by keeping to the shortest time possible.
- P. 10 Line 356 No definition of "reputable". Not needed.
- P. 10 Lines 364 - 366 Clean up language.
- P. 11 Lines 387 - 395 To be consistent with MI commitment statutes.
- P. 12 Line 429 Clean up language.
- P. 12 Lines 439 - 441 Clean up language/adds psychologist.
- P. 13 Lines 466 & 468 Treatment programs generally have a set number of days of program length under 90 days. This reduction will provide better consistency with the treatment system.
- P. 14 Lines 495 - 497 Clean up language.
- P. 15 Line 528 Clean up language.
- P. 15 Line 536 Clean up and to aid with possible problems with confidentiality.
- P. 15 Lines 548 & 555 Clean up language/adds psychologist.
- P. 15 Line 561 Protect the confidentiality of the proposed patient.
- P. 16 Line 567 Clean up language/adds psychologist.
- P. 16 Lines 592 - 596 Clean up language/adds jury.
- P. 16 Line 599 &
P. 17 Line 602 Provides a more realistic length of treatment time, 60 days is about the average length of treatment programs.
- P. 17 Lines 612 & 614 Clean up language/adds psychologist.
- P. 20 Line 743 See P. 25 below.
- P. 21 Lines 752 & 754 Since drug treatment is not as open ended as MI treatment, a shorter period of time is appropriate.
- P. 23 Lines 837 - 842 Clean up language. Most community based treatment programs do not have a physician as a head of the treatment facility so the decision should be made by a person with clinical skills and authority.
- P. 25 Lines 913, 920,
924 & 925
Line 743 If it can not be determined in the usual manner the county of residence of the patient, the secretary can determine the county of residence or nexus using this information. This is in determining which county will pay the court costs and applies primarily to transient persons.

SENATE BILL No. 232

By Senators McCray, Karr, and Mulich

(By Request)

2-9

0018 AN ACT concerning abuse of drugs; providing for treatment of
0019 drug abusers and persons incapacitated by drugs.

0020 *Be it enacted by the Legislature of the State of Kansas:*

0021 Section 1. For the purposes of this act:

0022 (a) "Approved private treatment facility" means a private
0023 agency providing facilities for the care or lodging of drug abusers
0024 meeting the standards prescribed in K.S.A. 65-4603 and amend-
0025 ments thereto and K.S.A. 65-4607 and amendments thereto for the
0026 treatment of drug abusers or persons incapacitated by drugs;

0027 (b) "approved public treatment facility" means a treatment
0028 facility owned and operated by the state of Kansas or any political
0029 subdivision thereof and approved by the secretary, pursuant to
0030 K.S.A. 65-4603 and amendments thereto and K.S.A. 65-4607 and
0031 amendments thereto;

0032 (c) "treatment facility" means an approved public or private
0033 treatment facility, but such term shall not include a licensed
0034 medical care facility, a licensed adult care home or a facility
0035 licensed under the provisions of K.S.A. 1982 Supp. 75-3307b, or
0036 any amendments thereto, or a certified psychologist or a person
0037 licensed to practice medicine or surgery if such psychologist or
0038 person licensed to practice medicine or surgery treats in the usual
0039 course of their professional practice drug abusers or persons
0040 incapacitated by drugs and are not exclusively engaged in the
0041 usual course of their professional practice in treating such per-
0042 sons;

0043 (d) "committee" means the Kansas citizens' committee on
0044 alcohol and other drug abuse;

0045 (e) "department" means the department of social and reha-
0046 bilitation services;

0047 (f) ~~"incapacitated person" means a person who has been~~
0048 ~~adjudged incapacitated by the district court;~~

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

0049 (g) "intoxicated person" means a person whose mental or
0050 physical functioning is substantially impaired as a result of the
0051 use of drugs;

0052 (h) "treatment" means the broad range of emergency, outpa-
0053 tient, intermediate, and inpatient services and care, including
0054 diagnostic evaluation, medical, psychiatric, psychological, and
0055 social service care, vocational rehabilitation and career counsel-
0056 ing, which may be extended to drug abusers and intoxicated
0057 persons;

0058 (i) "patient" means a person who is ~~an informal patient, a~~
0059 voluntary patient, a proposed patient, or an involuntary patient;

Delete

0060 (j) ~~"informal patient" means a person either receiving outpa-~~
0061 ~~tient care or treatment, which includes day and night hospital-~~
0062 ~~ization, at a treatment facility or who is admitted therein pursuant~~
0063 ~~to section 2;~~

Delete

0064 (k) "voluntary patient" means a person, ~~other than an infor-~~
0065 ~~mal patient, who is receiving care or treatment at a treatment~~
0066 facility other than by order of any court;

Delete

Insert voluntarily

0067 (l) "proposed patient" means a person for whom an applica-
0068 tion pursuant to section 8 has been filed;

0069 (m) "involuntary patient" means a person incapacitated by
0070 drugs who is receiving care or treatment under an order of a
0071 district court;

0072 (n) "other facilities for care or treatment" means any mental
0073 health clinic, medical care facility, nursing home, physician or
0074 any other institution or individual authorized or licensed by law
0075 to give care or treatment to any patient;

0076 (o) "physician" means a person licensed to practice medicine
0077 and surgery under the Kansas healing arts act;

0078 (p) "head of the treatment facility" means the administrative
0079 director of a treatment facility;

0080 (q) "care or treatment" means such necessary services as are
0081 in the best interests of the physical and mental health of the

0082 patient;

0083 (r) "discharge" means the final and complete release from
0084 care or treatment, by either an order of a district court pursuant to
0085 section 18 or a treatment facility;

0086 (s) "convalescent" shall describe the status of any patient who
0087 has not been discharged, but who is permitted by the head of the
0088 treatment facility to live apart from a treatment facility;

0089 (t) the various terms defined in K.S.A. 59-3002 and amend-
0090 ments thereto for obtaining a guardian or conservator, or both,
0091 mean the same herein as they do in that act;

0092 (u) "law enforcement officer" means any person who, by
0093 virtue of office or public employment, is vested by law with a
0094 duty to maintain public order or to make arrests for crimes,
0095 whether that duty extends to all crimes or is limited to specific
0096 crimes;

0097 (v) "person" means any individual, firm, partnership, corpo-
0098 ration, company, association, or joint-stock association, and the
0099 legal successor thereof;

0100 (w) "governmental unit" means the state, or any county, mu-
0101 nicipality, or other political subdivision thereof; or any depart-
0102 ment, division, board or other agency of any of the foregoing;

0103 (x) "secretary" means the secretary of social and rehabilita-
0104 tion services;

0105 (y) "drug abuser" means a person who habitually lacks self-
0106 control as to the use of drugs or uses drugs to the extent that such
0107 person's health is substantially impaired or endangered or such
0108 person's social or economic function is substantially disrupted,
0109 but such term shall not include a person who habitually lacks
0110 self-control in the use of alcohol;

0111 (z) "incapacitated by drugs" means that a person, as a result
0112 of use of drugs, is unconscious or has impaired judgment so that
0113 such person (1) is incapable of realizing and making a rational
0114 decision with respect to the need for treatment; or (2) lacks
0115 sufficient understanding or capacity to make or communicate
0116 responsible decisions concerning either such person's well-being
0117 or estate;

0118 (aa) "state institution" means any institution within the de-

0119 partment of social and rehabilitation services which offers drug
0120 and alcoholism treatment programs; and

0121 (bb) "drug" means the following: (1) The same as the term
0122 controlled substance in K.S.A. 65-4101, and (2) fluorocarbons,
0123 toluene and volatile hydrocarbon solvents.

0124 [^] Sec. 2. (a) A drug abuser may apply for voluntary treatment
0125 directly to an approved public treatment facility or state institu-
0126 tion as an informal patient. If the proposed patient is a minor or
0127 an incapacitated person, such minor or a parent, a legal guardian,
0128 or other legal representative of such minor or incapacitated per-
0129 son may make the application.

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.

0130 (b) Subject to rules and regulations adopted by the secretary,
0131 the head of an approved public treatment facility or state institu-
0132 tion may determine who shall be admitted for treatment. If a
0133 person is refused admission to an approved public treatment
0134 facility or state institution, the head of the treatment facility or
0135 state institution or the designee of the head of the treatment
0136 facility or state institution, subject to rules and regulations
0137 adopted by the secretary, shall refer the person to another ap-
0138 proved public treatment facility or state institution for treatment
0139 if possible and appropriate.

0140 (c) If ~~an informal~~ patient receiving inpatient care leaves an
0141 approved public treatment facility or state institution, such pa-
0142 tient shall be encouraged to consent to appropriate treatment. ~~If it~~
0143 ~~appears to the head of the treatment facility or state institution or~~
0144 ~~the designee of the head of the treatment facility or state institu-~~
0145 ~~tion that the informal patient is a drug abuser who requires help,~~
0146 ~~the secretary may arrange for assistance in obtaining supportive~~
0147 ~~services and residential facilities.~~

Change to: a voluntary

Delete

0148 (d) If ~~an informal~~ patient leaves an approved public treatment
0149 facility or state institution, ~~with or against the advice of the head~~
0150 of the treatment facility or state institution or the designee of the
0151 head of the treatment facility or state institution, ~~the secretary~~
0152 may make reasonable provisions for the transportation of the
0153 patient to another facility or to the patient's home. If the patient
0154 has no home the patient may be assisted in obtaining shelter. If
0155 the patient is a minor ~~or an incapacitated~~ person, the request for

Change to: a voluntary

Delete

Delete

Insert: , ward or a disabled

Delete

#

0156 discharge from an inpatient facility shall be ~~made by a parent,~~
 0157 ~~legal guardian, or other legal representative or by the minor or~~
 0158 ~~incapacitated person if such person was the original applicant.~~

Change to: subject to the provisions of KSA 59-3018, an amendments thereto.

0159 Sec. 3. Any law enforcement officer who has reasonable be-
 0160 lief, upon observation, that any person is intoxicated or incapaci-
 0161 tated by drugs and because of this condition is likely to be injured
 0162 or to injure others if allowed to remain at liberty may take such
 0163 person into custody without a warrant. ~~If such law enforcement~~
 0164 ~~officer takes such person into custody when the district court of~~
 0165 ~~the county of the presence of such person is available, the law~~
 0166 ~~enforcement officer shall forthwith present to such court an~~
 0167 ~~application for an order of protective custody pursuant to section~~
 0168 ~~7. If such law enforcement officer takes such person into custody~~
 0169 ~~when such court is not available, such law enforcement officer~~
 0170 ~~shall transport such person to any public treatment facility or~~
 0171 ~~state institution unless such person is charged with a crime, in~~
 0172 ~~which case such person may be arrested and otherwise dealt with~~
 0173 ~~under law in the same manner as other persons who are arrested.~~
 0174 ~~If the head of such treatment facility or state institution or the~~
 0175 ~~designee of the head of the treatment facility or state institution,~~
 0176 ~~after examination, has reason to believe that such person is~~
 0177 ~~intoxicated or incapacitated by drugs and because of this is likely~~
 0178 ~~to be injured or to injure others if allowed to remain at liberty, and~~
 0179 ~~if such treatment facility or state institution is willing to admit~~
 0180 ~~such person the law enforcement officer shall present to such~~
 0181 ~~treatment facility or state institution the application provided for~~
 0182 ~~in subsection (b) of section 4. If there is no public treatment~~
 0183 ~~facility or state institution available to receive such person within~~
 0184 ~~the territorial limits of the law enforcement officer's jurisdiction,~~
 0185 ~~the law enforcement officer may detain such person in a private~~
 0186 ~~treatment facility or other suitable emergency medical service, or~~
 0187 ~~any other suitable place, until the close of the first day such~~
 0188 ~~district court is available. Such person shall be entitled to imme-~~
 0189 ~~diately contact legal counsel or next of kin.~~

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 law enforcement officer shall present to such treatment facility the application provided for in Section 4. If the physician or psychologist does not believe such person to be intoxicated or incapacitated by drugs, the law enforcement officer shall release such person.

(B) If the physician or psychologist states that said physician or psychologist believes such person to be intoxicated or incapacitated by drug but the treatment 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 law enforcement officer's jurisdiction, the law enforcement 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 provisions of Section 7. If a law enforcement officer detains a person pursuant to this subsection, the law enforcement officer shall file the application provided for in Section 4 as soon as the court is open for the transaction of business.

0190 Sec. 4. Any public or private treatment facility or state insti-
 0191 tution may admit and detain any person for emergency observa-
 0192 tion, care or treatment under any of the following procedures:

(C) 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.

0193 (a) Upon an order of protective custody issued by a district
0194 court pursuant to section 7.

0195 (b) Upon written application of any law enforcement officer
0196 having custody of any person pursuant to section 3. The applica-
0197 tion shall state:

0198 (1) The name and address of such person, if known;

0199 (2) the name and address of the spouse or nearest relative, if
0200 known;

0201 (3) the officer's belief that such person is intoxicated or inca-
0202 pacitated by drugs and because of this is likely to be injured or to
0203 injure others if not immediately detained;

0204 (4) the circumstances under which such person was taken into
0205 custody;

0206 (5) ~~the fact that the district court is not available to issue an~~
0207 ~~order of protective custody pursuant to section 7.~~

0208 (c) Upon the written application of any ~~reputable~~ individual.
0209 The application shall state:

0210 (1) The name and address of such person, if known;

0211 (2) the name and address of the spouse or nearest relative, if
0212 known;

0213 (3) the applicant's belief that such person is intoxicated or
0214 incapacitated by drugs and because of this is likely to be injured
0215 or to injure others if not immediately detained;

0216 (4) the circumstances in support of such belief;

0217 (5) ~~the fact that the district court is not available to issue an~~
0218 ~~order of protective custody pursuant to section 7.~~ The application

0219 shall be accompanied by a statement in writing of a physician,
0220 stating that ~~the physician has examined~~ such person ~~within 48~~
0221 hours before the date of the statement and confirming the exis-
0222 tence of the described condition of such person.

0223 Upon the filing of the written application, the head of the
0224 treatment facility or state institution or the designee of the head of
0225 the treatment facility or state institution may authorize and order
0226 in writing any law enforcement officer or other person to take into
0227 custody and transport such person to the treatment facility or
0228 state institution.

0229 Sec. 5. Whenever any person has been admitted to a public or

Change to: law enforcement officer will submit the application provided for in Section 7, by 5:00 p.m. of the next full day that the court is open for the transaction of business or that the officer has been informed by a parent, guardian or other person in loco parentis to the person taken into custody that such person, whose name shall be stated in the application, will file the application provided for in Section 7, within such time.

Delete

Change to: person will submit the application provided for in Section 7 by 5:00 p.m. of the next full day that the district court is open for the transaction of business

Add: or psychologist

Delete.

Change to 72

Add: has been examined

Add: , provided however, if a physician or psychologist is unavailable to perform such examination or the proposed patient refuses or is otherwise unavailable, then the application shall so indicate and an examination shall be made not more than five days after the filing of the application.

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.

#

0230 private treatment facility or state institution pursuant to section 4,
 0231 the head of the treatment facility or state institution or the
 0232 designee of the head of the treatment facility or state institution
 0233 shall immediately notify such person's legal guardian, spouse or
 0234 any next of kin, if known, unless such application was made by
 0235 such person's legal guardian, spouse or next of kin.

0236 Sec. 6. The head of the treatment facility or state institution
 0237 or the designee of the head of the treatment facility or state
 0238 institution shall discharge any person admitted pursuant to sub-
 0239 section (a) of section 4 when the order of protective custody
 0240 expires. The head of the treatment facility or state institution or
 0241 the designee of the head of the treatment facility or state institu-
 0242 tion shall discharge any person admitted pursuant to subsection
 0243 (b) or (c) of section 4, not later than the close of the first full day
 0244 that the district court of the county of the presence of such person
 0245 is available after the admission date of such person unless an
 0246 order of protective custody, pursuant to section 7 has been en-
 0247 tered by the district court of the county of the presence of or
 0248 residence of such person.

0249 Sec. 7. A district court may issue an order of protective cus- Insert: ex parte
 0250 tody under any of the following circumstances:

0251 (a) Upon the verified application of any law enforcement
 0252 officer. The application shall state:

0253 (1) The name and address of the person, if known;

0254 (2) the name and address of the spouse or nearest relative, if
 0255 known;

0256 (3) the affiant's belief that the person is intoxicated or inca-
 0257 pacitated by drugs and because of this is likely to be injured or to
 0258 injure others if not immediately detained;

0259 (4) the circumstances under which the person was taken into
 0260 custody.

0261 ^ This order shall only be valid until 5 p.m. of the second day the
 0262 district court is open for the transaction of business after the date
 0263 of issuance, but in no case more than 72 hours following the
 0264 issuance of such order, excluding Saturdays, Sundays and legal
 0265 holidays. The district court shall not issue successive orders of
 0266 protective custody pursuant to this subsection.

Add: (5) The application provided for in Section 8,
 has been filed.

0267 (b) Upon the verified application of any reputable person, if
0268 the application provided for in section 8 has been filed in the
0269 court. The application shall state:

0270 (1) The application provided for in section 8 has been filed;

0271 (2) the affiant's belief that the proposed patient is intoxicated
0272 or incapacitated by drugs;

0273 (3) because of the proposed patient's intoxication or incapac-
0274 ity, such person is likely to be injured or to injure others if not
0275 immediately detained.

0276 This order shall only be valid until the conclusion of the
0277 hearing held pursuant to section 12.

0278 (c) ~~At any time after the hearing provided for in section 12,~~
0279 ~~when the court has found at such hearing by clear and convincing~~
0280 ~~evidence that the proposed patient is intoxicated or incapacitated~~
0281 ~~by drugs. This order shall be valid until the order for care or~~
0282 ~~treatment is executed.~~

Insert: A district court may issue an order of protecti
custody
Delete
Delete

0283 (d) ~~No order of protective custody shall be issued pursuant to~~
0284 ~~subsection (a) or (b) of this section] until the court has held a~~
0285 ~~hearing to determine whether there is probable cause to believe~~
0286 ~~the allegations made pursuant to subsection (a) or (b) of this~~
0287 ~~section. Such hearing shall be held with 48 hours of the filing of~~
0288 ~~such application, excluding Sundays and legal holidays. The~~
0289 ~~person against whom the application has been filed shall be~~
0290 ~~present at such hearing unless the attorney for such person shall~~
0291 ~~request that such person's presence be waived and the court finds~~
0292 ~~that the person's presence at the hearing would be injurious to~~
0293 ~~such person's welfare. The court shall enter in the record of the~~
0294 ~~proceedings the facts upon which the court has found that the~~
0295 ~~presence of the person at the hearing would be injurious to such~~
0296 ~~person's welfare. Notwithstanding the foregoing provisions of~~
0297 ~~this subsection, if the person against whom the application has~~
0298 ~~been filed requests in writing to the court or to such person's~~
0299 ~~attorney that such person be present at the hearing, then such~~
0300 ~~person's presence cannot be waived.~~

Change to: If an
Change to: is
Change to: shall hold
Delete
Delete
Change to: at the courts earliest opportunity after
Change to: but in no case longer than five days after
the filing of such application.

0301 (e) If the person against whom the application has been filed
0302 is in custody pursuant to the provisions of section 3 or 4 at the
0303 time such application is filed, the court may order that such

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0304 person remain in custody at a treatment facility, state institution
0305 or other suitable place until the conclusion of the hearing held
0306 pursuant to the provisions of this section. If the person against
0307 whom the application has been filed is not in custody at the time
0308 such application is filed, the court may order that such person be
0309 taken into custody and placed in a treatment facility, state insti-
0310 tution or other suitable place willing to receive such person until
0311 the conclusion of the hearing held pursuant to the provisions of
0312 this section.

0313 (f) The applicant and the person against whom the applica-
0314 tion has been filed shall be notified of the time and place of the
0315 hearing and afforded an opportunity to appear at the hearing, to
0316 testify and to present and cross-examine witnesses. If the person
0317 against whom the application has been filed has not retained an
0318 attorney, the court shall appoint an attorney for such person in the
0319 same manner as an attorney is appointed under the provisions of
0320 section 9. All persons not necessary for the conduct of the pro-
0321 ceedings may be excluded. The hearing shall be conducted in as
0322 informal a manner as may be consistent with orderly procedure
0323 and in a physical setting not likely to have a harmful effect on the
0324 person against whom the application has been filed. The court
0325 shall receive all relevant and material evidence which may be
0326 offered. If the applicant is not represented by counsel, the county
0327 or district attorney shall represent the applicant, prepare all
0328 necessary papers, appear at the hearing and present such evi-
0329 dence as the county or district attorney determines to be of aid to
0330 the court in determining whether or not there is probable cause to
0331 believe that the person against whom the application has been
0332 filed is a drug abuser or incapacitated by drugs and is likely to do
0333 physical injury to oneself or others if not immediately detained. If
0334 the court determines from the evidence that there is probable
0335 cause to believe that the person against whom the application has
0336 been filed is a drug abuser or incapacitated by drugs and is likely
0337 to do physical injury to oneself or others if not immediately
0338 detained, the court shall issue an order of protective custody;
0339 otherwise, the court shall terminate the proceedings.

0340 (g) The order of protective custody issued pursuant to provi-

1
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0341 sions of this section may authorize a health officer, physician, law
 0342 enforcement officer or other person as specified in the order to
 0343 take the person against whom the application has been filed into
 0344 custody and to transport and place such person in a designated
 0345 public or private treatment facility or state institution or other
 0346 suitable place willing to receive such person and may designate
 0347 the place of detention, but no person shall be detained in protec-
 0348 tive custody in a nonmedical facility used for the detention of
 0349 persons charged with or convicted of a crime unless other facili-
 0350 ties are not available. In lieu of such detention, the order of
 0351 protective custody may allow the person against whom the ap-
 0352 plication has been filed to be at liberty, subject to such conditions
 0353 as the court may impose, pending the hearing provided for in
 0354 section 12 or pending the execution of the order for care or
 0355 treatment.

0356 Sec. 8. Any ~~reputable~~ person may file in the district court of Delete
 0357 the county of the proposed patient's residence or presence a
 0358 verified application to determine whether the proposed patient is
 0359 a drug abuser or incapacitated by drugs. The application shall
 0360 state:

0361 (a) The applicant's belief that the proposed patient is a drug
 0362 abuser who habitually lacks self-control as to the use of drugs and
 0363 that the proposed patient: (1) Has threatened, attempted or in-
 0364 flicted physical harm on ~~such proposed patient~~ or another and
 0365 that unless committed is likely to inflict physical harm on ~~such~~ Change to: self
 0366 ~~proposed patient~~ or another; or (2) is incapacitated by drugs;
 0367 however, a refusal to undergo voluntary treatment does not con-
 0368 stitute, in and of itself, evidence of lack of judgment as to the
 0369 need for treatment, and the facts upon which such beliefs are
 0370 based;

0371 (b) the name, age, residence and present address of the pro-
 0372 posed patient, if known to the applicant;

0373 (c) the name and address of the nearest relatives of the pro-
 0374 posed patient, if known to the applicant, and if not known, that
 0375 the applicant has made diligent inquiry to learn the name of such
 0376 relatives;

0377 (d) the pecuniary condition of the proposed patient to the

0378 extent known by the applicant;

0379 (e) the name and address of the person, if any, having custody
0380 and control of the proposed patient if known to the applicant;

0381 (f) the names and addresses of witnesses by whom the truth of
0382 the application may be proved;

0383 (g) a request that the court make a determination that the
0384 proposed patient is a drug abuser or incapacitated by drugs and
0385 make one or more of the orders provided for in subsection (b) of
0386 section 7, in this section and in section 9.

0387 ~~Any such application may be accompanied, or the court may~~
0388 ~~require that such application be accompanied, by a statement in~~
0389 ~~writing of a physician stating that the physician has examined the~~
0390 ~~proposed patient and the results of the examination on the issue~~
0391 ~~of whether the proposed patient is a drug abuser or incapacitated~~
0392 ~~by drugs, or the district court may allow such application to be~~
0393 ~~accompanied by a verified statement by the applicant that the~~
0394 ~~proposed patient has refused to submit to an examination by a~~
0395 ~~physician.~~

0396 Sec. 9. Upon the filing of the application provided for in
0397 section 8, the district court shall issue the following:

0398 (a) An order fixing the time and place of the hearing on the
0399 application. The time designated in the order shall in no event be
0400 earlier than seven days or later than 14 days after the date of the
0401 filing of the application, unless advanced pursuant to section 10.

0402 In any case where the proposed patient is absent and the service
0403 of the notice on the proposed patient cannot be served because of
0404 the absence, then the time of absence shall not be included in
0405 computing the time of the expiration of the fourteen-day limita-
0406 tion above set out.

0407 (b) An order that the proposed patient appear at the time and
0408 place of the hearing. The proposed patient shall be present at the
0409 hearing, unless the attorney of such person shall request that such
0410 person's presence be waived and the court finds that the person's
0411 presence at the hearing would be injurious to the proposed
0412 patient's welfare. The court shall enter in the record of the
0413 proceedings the facts upon which the court has found that the
0414 presence of the person at the hearing would be injurious to such

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 a drug abuser or is incapacitated by drugs.

0415 person's welfare. Notwithstanding the foregoing provisions of
 0416 this subsection, if the person against whom the application has
 0417 been filed requests in writing to the court or to such person's
 0418 attorney that such person be present at the hearing, then such
 0419 person's presence cannot be waived.

0420 (c) An order appointing an attorney to represent the proposed
 0421 patient at all stages of the proceedings. The court shall give
 0422 preference, in the appointment of the attorney, to any attorney
 0423 who has represented the proposed patient in other matters if the
 0424 court has knowledge of the prior relationship. The proposed
 0425 patient shall have the right to engage an attorney of the proposed
 0426 patient's own choice and, in such an event, the attorney ap-
 0427 pointed herein shall be relieved of all duties by the court.

0428 (d) An order that the proposed patient shall appear at a time
 0429 and place that is in the best ~~interest~~ of the patient to consult with Change to: interests
 0430 the attorney for the proposed patient, which time shall be prior to
 0431 the execution of the order for evaluation unless an order of
 0432 protective custody has been issued and detention of the proposed
 0433 patient thereunder is in a place outside the jurisdiction of the
 0434 court.

0435 (e) A notice in the manner provided for in section 11.

0436 (f) An order for evaluation. Such order may be served on the
 0437 proposed patient at the same time or after notice is given. It shall
 0438 be served in the manner provided for in section 11. It shall order
 0439 the proposed patient to submit to an evaluation and to undergo
 0440 such evaluation at a public or private treatment facility, state
 0441 institution, mental health clinic ~~or physician~~ designated by the
 0442 court in the order. A public or private treatment facility or state
 0443 institution shall receive and evaluate any proposed patient or-
 0444 dered evaluated under this subsection (f). The order for evalua-
 0445 tion shall require the examiner to prepare and submit to the court
 0446 a report in writing of the evaluation at the time designated by the
 0447 court in the order, but in no event later than three days prior to the
 0448 date of the hearing provided for in section 12. In addition, such
 0449 order shall state that the report also shall be made available only
 0450 to counsel for the parties at least three days prior to such hearing.
 0451 Such report shall state that the examiner has made an examination

Insert: by a physician or psychologist
 Insert: or
 Delete

/

0452 of the proposed patient and shall state the results of the exami-
0453 nation on the issue of whether the proposed patient is a drug
0454 abuser or incapacitated by drugs. Such order shall be issued
0455 unless the court determines that the statement of the physician, if
0456 any, filed with the application is a sufficient evaluation. Upon the
0457 filing of the application provided for in section 8, the district
0458 court may in its discretion authorize and order any law enforce-
0459 ment officer or other person designated in the order to take the
0460 proposed patient into custody and transport such patient forth-
0461 with before the court or at the earliest time the court is available at
0462 which time the court or an attorney appointed by the court shall
0463 explain to the proposed patient the nature of the proceedings and
0464 the rights of the proposed patient. If the proposed patient at this
0465 time consents in writing that the hearing not be set for ~~90~~ days so ——— Change to: 60
0466 that the court may make an order of referral, the court, in its
0467 discretion, may refer the proposed patient for a period of time not
0468 to exceed ~~90~~ days for short-term care or treatment in any of the 60 ——— Change to: 60
0469 following facilities:

0470 (1) A public or private treatment facility or state institution;
0471 (2) any facility of the United States government available for
0472 the care or treatment of a drug abuser or person incapacitated by
0473 drugs;

0474 (3) other facilities for care or treatment except that an order for
0475 care or treatment in any of the facilities described in paragraphs
0476 (2) and (3) of this subsection (f) shall be conditioned upon the
0477 consent of such facility.

0478 (g) An order for the disclosure of all records, reports, evalua-
0479 tions or other treatment documents that are deemed necessary for
0480 the proceedings before the court. Such order shall be subject to
0481 the limitations established by section 26.

0482 (h) Upon the issuance by the court of the referral order as
0483 provided in this section, the court may in its discretion issue only
0484 those mandatory orders provided herein as the court may deem
0485 necessary and proper and shall not be subject to the qualifications
0486 for issuing a referral order as provided in section 13.

0487 Sec. 10. At or after the filing of the application provided for
0488 in section 8 and prior to the hearing provided for in section 12,

0489 the court may issue any of the following orders:

0490 (a) An order of protective custody. The order shall be subject
0491 to the requirements and limitations of section 7.

0492 (b) An order for investigation. Such investigation shall cover
0493 the character, family relationships, past conduct, whether or not
0494 the proposed patient is likely to be injured or to injure others if
0495 allowed to remain at liberty and other pertinent factors. ~~At the~~

Change to: Upon the order

0496 ~~direction of the court, any person appointed by the court shall~~
0497 ~~make such investigation. The person who conducts the inves-~~
0498 tigation shall promptly make a report to the court, in writing,
0499 which report shall be made available only to counsel for the
0500 parties at least three days prior to such hearing.

Change to: the person appointed to conduct

0501 (c) An order of continuance. For good cause shown, one
0502 continuance may be granted for no longer than seven days,
0503 provided that such limitations do not apply to a request for an
0504 order of continuance made by the proposed patient.

0505 (d) An order of advancement. Upon request by the proposed
0506 patient or the proposed patient's attorney, the district court shall
0507 advance the date of hearing to as early a date as is practicable.

0508 Sec. 11. The notice required by subsection (e) of section 9
0509 shall be given to the proposed patient named in the application,
0510 the attorney appointed pursuant to subsection (c) of section 9, and
0511 to such other persons as the court shall direct. (a) The notice shall
0512 state:

0513 (1) That an application has been filed, alleging that the pro-
0514 posed patient is a drug abuser or person incapacitated by drugs
0515 and requesting that the court order care or treatment;

0516 (2) the time and place of the hearing and whether the pro-
0517 posed patient shall be present;

0518 (3) the name of the attorney appointed to represent the pro-
0519 posed patient and the time and place where the proposed patient
0520 shall consult with such attorney;

0521 (4) that the proposed patient has a right to demand a hearing
0522 before a jury.

0523 (b) The court may order any of the following to serve the
0524 notice:

0525 (1) The physician currently administering to the proposed

1

0526 patient, provided the physician consents;

0527 (2) the head of the local public or private treatment facility or
0528 state institution or the designee of such person;

Insert: in which the proposed patient is present.

0529 (3) the local health officer or the designee of such person;

0530 (4) the secretary of social and rehabilitation services or the
0531 designee of the secretary;

0532 (5) any law enforcement officer.

0533 The notice shall be served personally on the proposed patient
0534 and the attorney appointed pursuant to subsection (c) of section 9

0535 not less than five days prior to the date of the hearing and
0536 immediate return thereof shall be made. Notice to all other

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

0537 persons shall be in such manner and within such time as the court
0538 shall direct.

0539 Sec. 12. (a) The hearing shall be held at the time and place
0540 specified in the court's order unless the proposed patient has

0541 requested a continuance as provided in section 8 or section 10.

0542 The hearing shall be held before the court unless the proposed
0543 patient, at least 48 hours prior to the time of the hearing, requests

0544 in writing a hearing before a jury.

0545 (b) The jury, if one is requested, shall consist of six persons
0546 and shall be selected as provided by law.

0547 (c) Within 48 hours immediately prior to and during the
0548 hearing provided for in this section, a physician may not admin-

Insert: or psychologist

0549 ister to a proposed patient any medication or therapy which will
0550 alter such proposed patient's mental state in such a way as to

0551 adversely affect such patient's judgment or hamper such patient
0552 in preparing for or participating in the hearing, unless such

0553 medication or therapy is necessary to sustain life or protect the
0554 patient or others. The court shall enter an order directing the

0555 physician to present to the court a record of all such medications

Insert: or psychologist

0556 or therapy, or both, that have been administered to the proposed
0557 patient during the 48 hours immediately prior to the hearing.

0558 (d) The applicant and the proposed patient shall be afforded
0559 an opportunity to appear at the hearing, to testify and to present

0560 and cross-examine witnesses. All persons not necessary for the
0561 conduct of the proceedings may be excluded. The hearings shall

Change to: shall

0562 be conducted in as informal a manner as may be consistent with

0563 orderly procedure and in a physical setting not likely to have a
 0564 harmful effect on the proposed patient. The court shall receive all
 0565 relevant and material evidence which may be offered, including
 0566 the testimony or written findings and recommendations of the
 0567 hospital, clinic, or physician who has examined or evaluated the
 0568 proposed patient and the testimony and written findings and
 0569 recommendations of the investigators pursuant to subsection (b)
 0570 of section 10. Such evidence shall not be privileged for the
 0571 purpose of this hearing.

Insert: , psychologist

0572 (e) If the applicant is not represented by counsel, the county
 0573 or district attorney shall represent the applicant, prepare all
 0574 necessary papers, appear at the hearing and present such evi-
 0575 dence as the county or district attorney shall determine to be of
 0576 aid to the court in determining whether the proposed patient is a
 0577 drug abuser or incapacitated by drugs.

0578 (f) If, upon the completion of the hearing, the court finds by
 0579 clear and convincing evidence that the proposed patient is a drug
 0580 abuser or incapacitated by drugs, the court shall order care or
 0581 treatment for such person at any of the following facilities:

- 0582 (1) A public or private treatment facility or state institution;
- 0583 (2) any facility of the United States government available for
- 0584 the care or treatment of a drug abuser or person incapacitated by
- 0585 drugs;
- 0586 (3) other facilities for care or treatment except that an order for
- 0587 care or treatment in any of the facilities described in paragraphs
- 0588 (2) and (3) is conditioned upon the consent of such facility.

0589 (g) When the court orders care or treatment in facilities de-
 0590 scribed in (2) or (3), it shall retain jurisdiction to modify, change
 0591 or terminate such order.

0592 (h) If, upon the completion of the hearing the court finds that
 0593 ~~it has not been shown by clear and convincing evidence that the~~
 0594 proposed patient is a drug abuser or person incapacitated by
 0595 drugs, the court shall enter the findings in the record and shall by
 0596 an appropriate order terminate the proceedings.

Insert: or jury

Delete

Add: has not been shown by clear and convincing evidence to be

Delete

0597 Sec. 13. (a) The proposed patient, at any time prior to the
 0598 hearing provided for in section 12, may request, in writing, that
 0599 the hearing be continued for 90 days so that the court may make

Change to: 60

0600 an order of referral. Upon receipt of such request, the court may
 0601 order the referral of the proposed patient for a period of time until
 0602 treatment is completed but not to exceed 90 days, for short-term Change to: 60
 0603 care or treatment, to any of the following facilities:

0604 (1) A public or private treatment facility or state institution;

0605 (2) any facility of the United States government available for
 0606 the care or treatment of a drug abuser or person incapacitated by
 0607 drugs;

0608 (3) other facilities for care or treatment except that an order for
 0609 care or treatment in any of the facilities described in paragraph (1)
 0610 or (2) of this subsection (a) is conditioned upon the consent of
 0611 such facility.

0612 (b) The court ~~may~~ not issue an order of referral unless: Change to: shall

0613 (1) The report of the examiner, provided for in subsection (f)
 0614 of section 9 or the statement of the physician, if one has been filed Insert: or psychologist
 0615 with the application and found by the court to be a sufficient
 0616 evaluation, states that the proposed patient is a drug abuser or
 0617 incapacitated by drugs;

0618 (2) the attorney representing the proposed patient has filed a
 0619 statement, in writing, stating that the attorney has explained to
 0620 the proposed patient the nature of the order of referral and the
 0621 right of the proposed patient to a hearing before a court or jury to
 0622 determine whether the proposed patient is a drug abuser or
 0623 incapacitated by drugs.

0624 (c) Any order of referral under this section shall include an
 0625 order for the disclosure, preparation and submission of written
 0626 findings and recommendations of the treatment facility or state
 0627 institution.

0628 (d) Any proposed patient who has been referred for care or
 0629 treatment under this section may be accepted for voluntary ad-
 0630 mission in a public or private treatment facility or state institu-
 0631 tion, or if referred to a public or private treatment facility or state
 0632 institution, may be discharged by such facility pursuant to sec-
 0633 tion 19. When the proposed patient has been admitted as a
 0634 voluntary patient or discharged, the public or private treatment
 0635 facility or state institution shall file written notice of the change
 0636 in status of the proposed patient in the court which had ordered

0637 the referral. The filing of either notice shall constitute a dismissal
0638 of the pending application.

0639 (e) Unless the proposed patient has been accepted as a vol-
0640 untary patient by a public or private treatment facility or state
0641 institution or discharged by a public or private treatment facility
0642 or state institution, the facility treating the proposed patient shall,
0643 not later than 10 days prior to the expiration date of the referral
0644 period, file a written report of its findings and recommendations
0645 with the court. The court shall then set the date for the hearing.
0646 Such hearing date shall not be later than the expiration date of the
0647 referral period, unless continued for good cause shown.

0648 Sec. 14. All orders of referral or for care or treatment in a
0649 public treatment facility or state institution shall be made on the
0650 form prescribed by the secretary. Admission shall be to the public
0651 treatment facility or state institution previously designated by the
0652 secretary to accept persons from the area of the court's jurisdic-
0653 tion, and at a time specified by the head of the public treatment
0654 facility or state institution which shall be not more than five days
0655 after the date of the order. Notice of the order shall be given
0656 immediately to the designated public treatment facility or state
0657 institution.

0658 Sec. 15. All orders of protective custody, referral or care or
0659 treatment shall authorize a suitable person to transport the indi-
0660 vidual named in the order to the place of detention or care or
0661 treatment specified in the order. All such orders shall be served
0662 by the person transporting the individual named in the order
0663 upon the person in charge of the place of detention or care or
0664 treatment or such individual's designee and due return thereof
0665 made to the court. A female being transported to such place shall
0666 be accompanied by a female attendant, unless she is accompanied
0667 by an adult relative. An individual shall not be transported in a
0668 marked police car or sheriff's car if other means of transportation
0669 are available. The least amount of restraint necessary shall be
0670 used in transporting such person.

0671 Sec. 16. (a) An order of referral or care or treatment to a
0672 public treatment facility or state institution shall be executed
0673 within five days by the admission of the proposed patient or

0674 involuntary patient to a public treatment facility or state institu-
0675 tion. An order of referral or care or treatment to a private treat-
0676 ment facility or other facility for care or treatment which is listed
0677 on the register maintained by the secretary under subsection (b)
0678 shall be executed within five days, or as soon thereafter as
0679 possible, by admission of the proposed patient or involuntary
0680 patient to the facility. An order of referral or care or treatment to a
0681 private treatment facility which is not listed on the register
0682 maintained by the secretary under subsection (b) or other facility
0683 for care or treatment which is not listed on the register maintained
0684 by the secretary under subsection (b) shall be executed, as soon as
0685 such treatment facility or other facility for care or treatment
0686 consents, by admission of the proposed patient or involuntary
0687 patient to the private treatment facility or other facility for care or
0688 treatment.

0689 (b) The secretary shall maintain a register of each private
0690 treatment facility or other facility for care or treatment which
0691 agrees to accept proposed patients or involuntary patients. The
0692 secretary shall provide a current copy of the register to each
0693 district court in this state not less than twice during any calendar
0694 year.

0695 Sec. 17. (a) After the application provided for in section 8 or
0696 section 18 is filed, the district court at any time, on its own motion
0697 or upon the written request of any person, may transfer the venue
0698 of any case to any of the following district courts under the
0699 following conditions:

0700 (1) When the application is filed in the county of the resi-
0701 dence of the patient:

0702 (A) To the county where the patient is being detained in a
0703 public or private treatment facility or state institution under the
0704 authority of an order issued pursuant to section 7, section 12 or
0705 section 13;

0706 (B) to any other county designated by the court, provided that
0707 the patient has made a request for a change of venue and the
0708 district court finds that the patient cannot obtain a fair hearing in
0709 the county of the patient's residence.

0710 (2) When the application is filed in the county of the presence

0711 of the patient:

0712 (A) To the county of the residence of the patient;

0713 (B) to the county where the patient is being detained in a
0714 public or private treatment facility or state institution under the
0715 authority of an order issued pursuant to section 7, section 12 or
0716 section 13;

0717 (C) to any other county designated by the court, provided that
0718 the patient has made a request for a change of venue and the
0719 district court finds that the patient cannot obtain a fair hearing in
0720 the county of the patient's presence.

0721 (b) If any patient is in a public or private treatment facility or
0722 state institution the district court of the county in which the
0723 treatment facility or state institution is located may not transfer
0724 venue under any circumstances unless the patient has requested
0725 such transfer.

0726 (c) When any order changing venue is issued, the district
0727 court issuing such order shall transmit to the district court to
0728 which venue was changed a certified copy of all pleadings and
0729 orders in the case. The district court issuing such order shall
0730 transmit to the district court of the residence of the proposed
0731 patient a statement of all court costs incurred by the county of the
0732 district court issuing such order and a certified copy of all
0733 pleadings and orders in the case.

0734 (d) Any district court to which venue is transferred shall
0735 proceed in the case as if the application had been originally filed
0736 therein and shall cause notice of the change of venue to be given
0737 to the persons and in the manner provided for in section 11. The
0738 court need not issue the order for evaluation pursuant to subsection
0739 (f) of section 9 if such order has previously been issued.

0740 (e) Any district court to which venue is transferred shall
0741 transmit a statement of any court costs incurred and a certified
0742 copy of all pleadings and orders in the case to the district court of
0743 the county of the residence of the patient.

0744 Sec. 18. (a) Any involuntary patient or any person on behalf
0745 of an involuntary patient may file a verified application for
0746 discharge in the district court that issued the order for care or
0747 treatment. The application shall state:

Add: or to the county designated by Section 29.

- 0748 (1) The name of the involuntary patient;
- 0749 (2) the name and address of the nearest relatives of the invol-
- 0750 untary patient, if known to the applicant;
- 0751 (3) a request for discharge.

0752 Such an application shall not be filed within ~~six~~ months from] Change to: three
 0753 the date of the original order for care or treatment nor more often
 0754 than once every ~~six~~ months thereafter.] Change to: three

0755 Upon the filing of the application, the district court shall
 0756 proceed with a hearing in the same manner and with the same
 0757 powers as if an application, pursuant to section 8, had been filed
 0758 in the court. The court shall not issue the orders provided for in
 0759 subsection (f) of section 9 and subsection (b) of section 10 but
 0760 shall give notice of the time and place of the hearing to the
 0761 treatment facility, state institution or other facilities for care or
 0762 treatment to which the involuntary patient was ordered for care or
 0763 treatment.

0764 (b) Upon the completion of the hearing, if the district court
 0765 finds by clear and convincing evidence that the involuntary
 0766 patient continues to be a drug abuser or a person incapacitated by
 0767 drugs, the district court shall order either that the original order
 0768 for care or treatment continue or that a new order for care or
 0769 treatment be issued. If the court finds that it has not been shown
 0770 by clear and convincing evidence that the patient continues to be
 0771 a drug abuser or incapacitated by drugs, it shall discharge the
 0772 patient. A copy of the court's order shall be sent by mail to the
 0773 involuntary patient and to the treatment facility, state institution
 0774 or other facilities for care or treatment to which the involuntary
 0775 patient had been ordered for care or treatment.

0776 Sec. 19. (a) The commissioner of mental health and retarda-
 0777 tion services may transfer any patient from any institution under
 0778 the control of such commissioner to any other such institution
 0779 whenever the commissioner deems it to be in the best interest of
 0780 the patient.

0781 (b) When any proposed patient or involuntary patient has
 0782 been ordered to any treatment facility or state institution on
 0783 referral or for care or treatment, the head of the treatment facility
 0784 or state institution shall discharge such patient when such patient

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0785 is no longer in need of care or treatment.

0786 (c) The head of the treatment facility or state institution may
0787 release any patient on convalescent status when the head of the
0788 treatment facility or state institution believes that such release is
0789 in the best interest of the patient.

0790 The treatment facility or state institution shall continue to have
0791 the responsibility to formulate a plan of treatment for the well-
0792 being of any patient released on convalescent status. Such re-
0793 sponsibility shall also include a plan of care or treatment and the
0794 place where it shall be received, notwithstanding any law autho-
0795 rizing the patient or the patient's guardian, if any, to determine
0796 such place. The head of the treatment facility or state institution
0797 shall have the authority to change the plan or place of care or
0798 treatment whenever the head of the treatment facility or state
0799 institution deems it necessary for the welfare of the patient. Such
0800 authority shall include the right to revoke the release on conva-
0801 lescent status and to order the patient readmitted to the treatment
0802 facility or state institution, as applicable. The head of the treat-
0803 ment facility or state institution may authorize and order any law
0804 enforcement officer or other person to take into custody and
0805 transport the patient to a treatment facility, state institution or
0806 other facility for care or treatment. Prior to the end of the first year
0807 on convalescent status, and not less often than annually thereafter
0808 while an involuntary patient is on convalescent status, the head of
0809 the treatment facility or state institution shall reexamine the facts
0810 relating to the care or treatment of the involuntary patient on
0811 convalescent status.

0812 (d) Nothing in this section shall be construed to amend or
0813 modify or repeal any law relating to the confinement of persons
0814 charged with or convicted of a criminal offense.

0815 Sec. 20. The head of the treatment facility or state institution
0816 shall notify, in writing, the district court, which has ordered the
0817 care or treatment of the involuntary patient or the referral of the
0818 proposed patient, of the patient's discharge or release on conva-
0819 lescent status. When a notice of discharge is received, the court
0820 shall file the same in the record, which shall terminate the
0821 proceedings. When a notice of release on convalescent status is

0822 received, the court shall file the same in the records.

0823 Sec. 21. If any patient leaves the place of care or treatment
0824 without the authority of the head of the treatment facility or state
0825 institution, the head of the treatment facility or state institution
0826 may authorize and order, in writing, any law enforcement officer
0827 or other person to take such patient into custody and transport
0828 such patient to such place as may be directed by the head of the
0829 treatment facility or state institution. The expense of such trans-
0830 portation shall be borne by the treatment facility or state institu-
0831 tion.

0832 Sec. 22. Every patient shall receive humane care to the extent
0833 that facilities, equipment and personnel are available and medi-
0834 cal treatment consistent with accepted medical ethics and prac-
0835 tices.

0836 Sec. 23. Restraints shall not be applied to a patient unless it is
0837 determined by ~~the head of the treatment facility or state institu-~~
0838 ~~tion or a member of the medical staff~~ to be required by the
0839 patient's medical needs. The ~~head of the treatment facility or state-~~
0840 ~~institution or a member of the medical staff~~ shall sign a statement
0841 explaining the medical necessity for the use of any restraints and
0842 shall make such statement a part of the ~~clinical~~ record of such
0843 patient.

0844 Sec. 24. (a) Every patient detained in a treatment facility,
0845 state institution or other facility for care or treatment shall have
0846 the absolute right to communicate by letter with the secretary or
0847 any other person in the department of social and rehabilitation
0848 services, the head of the treatment facility, the head of the state
0849 institution, any court, physician or attorney. The head of the
0850 treatment facility or state institution may impose reasonable rules
0851 and regulations on any patient concerning communication by
0852 letter or otherwise with any person or agencies and concerning
0853 the right to receive visitors. Any patient shall have the right to be
0854 visited by any physician or attorney at any reasonable hour.

0855 (b) Any person willfully depriving any patient of the rights
0856 protected by this section shall be guilty of a class C misdemeanor.

0857 Sec. 25. Except as limited by this act, a person shall not lose
0858 rights as a citizen, property rights or legal capacity by reason of

Change to: a physician or psychologist

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0859 being a patient. The head of the treatment facility or state insti-
0860 tution may make reasonable rules and regulations concerning the
0861 exercise of such rights by the patients in the treatment facility or
0862 state institution, respectively.

0863 Sec. 26. (a) The district court, hospital or medical records of
0864 any patient or former patient that are in the possession of any
0865 district court, public or private treatment facility, state institution
0866 or other facility for care or treatment shall be privileged to the
0867 patient and shall not be disclosed except as (1) otherwise pro-
0868 vided in this act, or (2) under any of the following conditions:

0869 (A) Upon the consent, in writing, of the patient or former
0870 patient, or if the patient or former patient is under 16 years of age,
0871 by a parent of the patient or former patient, or if the patient or
0872 former patient has a guardian, by the guardian. However, the
0873 head of the treatment facility or state institution or the head of the
0874 other facility for care or treatment who has the records may refuse
0875 to disclose such records if the head of such facility or state
0876 institution has stated, in writing, that such disclosure will be
0877 injurious to the welfare of the patient or former patient.

0878 (B) Upon a bona fide medical emergency without the consent
0879 of the patient or former patient.

0880 (C) Upon the directive of the secretary to the committee
0881 disclosure may be made from patients' records for purposes of
0882 research into the causes and treatment of drug abuse. The infor-
0883 mation furnished under this subsection shall not be published in
0884 any way which may disclose a patient's name or other identifying
0885 information.

0886 (D) Upon the order of any court of record pursuant to subpart
0887 (E) of part 2 of volume 42 of the code of federal regulations in
0888 effect on the effective date of this act.

0889 (b) Any person willfully violating this section shall be guilty
0890 of a class C misdemeanor.

0891 Sec. 27. Any person acting in good faith and without negli-
0892 gence shall be free from all liability, civil or criminal, which
0893 might arise out of acting pursuant to this act. Any person who for
0894 a corrupt consideration or advantage, or through malice, shall
0895 make or join in making or advise the making of any false appli-

0896 cation, report or order provided for in this act shall be guilty of a
0897 class B misdemeanor.

0898 Sec. 28. Neither an order of referral nor an order for care or
0899 treatment made pursuant to this act shall imply an adjudication of
0900 incapacity, nor shall either order create any presumption that the
0901 proposed patient or involuntary patient is an incapacitated per-
0902 son.

0903 Sec. 29. In each proceeding the court shall allow and order
0904 paid to any individual or institution as part of the costs thereof a
0905 reasonable fee and expenses for any professional services ordered
0906 performed by the court pursuant to this act, other than those
0907 performed by any individual or institution under the jurisdiction
0908 of the secretary, but including the fee of counsel for the patient
0909 when counsel is appointed by the court. Other costs and fees shall
0910 be allowed and paid as are allowed by law for similar services in
0911 other cases. The costs shall be taxed to the estate of the patient, to
0912 those bound by law to support such patient or to the county of the
0913 residence of the patient as the court having venue shall direct.

Insert: or nexus

0914 Any district court receiving a statement of costs from another
0915 district court shall forthwith approve the same for payment out of
0916 the general fund of its county, except that it may refuse to approve
0917 the same for payment only on the grounds that the patient is not a
0918 resident of its county. In such case it shall transmit the statement
0919 of costs to the secretary who shall determine the question of
0920 residence and certify its findings to each district court. If the

Add: If the secretary is unable to determine the questi
of residence, the secretary then shall determine which
county has the closest nexus to the patient. The
secretary shall consider the number of contacts or
relationships, origin of the involuntary commitment pro-
cess, and such other matters the secretary deems appro-
priate in determining the county of nexus.

0921 claim for costs is not paid within 30 days after such certification,
0922 an action may be maintained thereon by the claimant county in
0923 the district court of the claimant county against the debtor
0924 county. The findings made by the secretary as to the residence of
0925 the patient shall be applicable only to the assessment of costs. Any

Insert: or nexus

0926 Any county of residence which pays from its general fund court
0927 costs to the district court of another county may recover the same
0928 in any court of competent jurisdiction from the estate of the
0929 patient or from those bound by law to support the patient, unless
0930 the court finds that the proceedings in which such costs were
0931 incurred were instituted without probable cause and not in good
0932 faith.

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

0933 Sec. 30. In the event of the sudden or unexpected death of a
0934 patient in a treatment facility or state institution the head of the
0935 treatment facility or state institution shall give notice of such
0936 death to the county or district attorney and the coroner. Notice of
0937 the death of any proposed patient or involuntary patient shall be
0938 given to the district court having issued the order of referral or
0939 care or treatment, which notice shall include the time, place and
0940 cause of death.

0941 Sec. 31. The provisions of law enabling the state to secure
0942 reimbursement for any such items of cost, applicable to involun-
0943 tary patients in state hospitals, shall apply with equal force in
0944 respect to each item of expense incurred by the state in connec-
0945 tion with the commitment, care, custody and treatment of any
0946 person committed to the secretary or to any institution main-
0947 tained by the state. Voluntary patients may be required to pay the
0948 costs of their subsistence, care and treatment.

0949 Sec. 32. Nothing in this act shall relieve any person from civil
0950 liability or criminal liability and prosecution for any act commit-
0951 ted while under the influence of drugs or incapacitated by drugs.

0952 Sec. 33. This act shall be known and may be cited as the
0953 treatment act for drug abusers.

0954 Sec. 34. If any provision of this act or the application thereof
0955 to any person or circumstances is held invalid, the invalidity shall
0956 not affect other provisions or applications of the act which can be
0957 given effect without the invalid provision or application, and to
0958 this end the provisions of this act are severable.

0959 Sec. 35. This act shall take effect and be in force from and
0960 after its publication in the statute book.