

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Senator Robert Frey at  
Chairperson

10:00 a.m./p.m. on April 2, 1985 in room 514-S of the Capitol.

~~All~~ members ~~were~~ present ~~except~~ Senators Frey, Hoferer, Burke, Feleciano, Gaines, Langworthy, Parrish, Talkington, Winter and Yost.

Committee staff present:

Mary Sue Hack, Office of Revisor of Statutes  
Mike Heim, Legislative Research Department  
Jerry Donaldson, Legislative Research Department

Conferees appearing before the committee:

Ron Todd, Insurance Department  
Dr. Jerry Hanna, Social and Rehabilitation Services  
Joan Strickler, Kansas Advocacy and Protective Services for the  
Developmentally Disabled

Senate Bill 351 - Intervention by health care stabilization fund in  
medical malpractice actions.

Ron Todd, Insurance Department, stated he was testifying as administrator of the Health Care Stabilization Fund. The department is not advocating the bill or proposing it. He explained the purpose of the bill. He said they don't believe this particular legislation is necessary in order for them to intervene. There is nothing wrong with the language in lines 50 through 53 being in the bill. During committee discussion a committee member reported this bill came from a Senate Ways and Means Subcommittee. Another committee member proposed, amending the bill that whenever the fund is in jeopardy, there has to be another attorney, and leave discretion out. Mr. Todd responded, the amendment didn't make any difference to the department. The interests of the funds are being properly protected, and he feels there is no problem.

Senator Gaines made a conceptual motion to amend the bill in line 49 by striking "may" and inserting "shall"; in line 82, deleting "a" and in line 83 deleting "attorney fees". Senator Winter seconded the motion. The motion carried. Senator Gaines moved to report the bill favorably as amended. Senator Winter seconded the motion. The motion carried.

House Bill 2049 - Repealing statutes concerning transfer and discharge  
of persons from state institutions.

Dr. Jerry Hanna, Social and Rehabilitation Services, explained the passage of this bill would simplify and clarify the authority of the Secretary in admitting, discharging and transferring patients at state institutions for the mentally retarded. He pointed out this issue is addressed in Substitute for House Bill 2050. Following committee discussion, Senator Gaines moved to report the bill favorably. Senator Feleciano seconded the motion. The motion carried. A copy of a statement from Robert C. Harder is attached (See Attachment I).

House Bill 2065 - Confidentiality of records of institutions for the  
mentally retarded.

Dr. Jerry Hanna explained the purpose of the bill is to grant a privilege from disclosure with certain exceptions for records maintained on behalf of residents and former residents of state institutions for the

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

room 514-S, Statehouse, at 10:00 a.m./p.m. on April 2, 1985.

House Bill 2065 continued

mentally retarded. A copy of a statement from Robert C. Harder is attached (See Attachment II). He stated he supports the proposed amendment that will be presented by Joan Strickler.

Joan Strickler, Kansas Advocacy and Protective Services for the Developmentally Disabled, explained the amended language in New Section 2 on page 2, line 67, will assure that Kansas is in compliance with the new federal requirements. The chairman inquired if it would harm their position if the reference to the criminal penalty is eliminated? She replied, no. Copies of her statement and a balloon version of the proposed amendment is attached (See Attachments III). She explained the proposed amendment to the committee.

Senator Winter moved to amend the bill by adopting the proposed amendment. Senator Parrish seconded the motion. The motion carried. Senator Gaines moved to amend the bill by deleting the penalty section of the bill in lines 77 and 78. Senator Winter seconded the motion. Following committee discussion, the motion carried. Senator Winter moved to report the bill favorably as amended. Senator Hoferer seconded the motion. The motion carried.

Substitute for House Bill 2454 - Preliminary examinations and depositions in criminal cases.

During committee discussion, a committee member passed out copies of House Bill 2445 and explained, the second part of this bill contains the discovery bill which the bar is interested in. Following further committee discussion, Senator Gaines moved to request the chairman submit a letter to the Kansas Judicial Council to study the subject matter in House Bill 2454 and House Bill 2445 and the study committee report back to this committee next year. Senator Winter seconded the motion. The motion carried.

House Bill 2059 - Mental care and treatment of child in need of care.

Senator Hoferer moved to report the bill favorably. Senator Parrish seconded the motion. The motion carried.

The meeting adjourned.

Copy of the guest list is attached (See Attachment IV).



STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding H.B./S.B. 2049

- 1. Title - This bill would repeal four statutes that are no longer needed, and are, at times, in conflict with new provisions of H.B. 2697 which was passed by the 1984 Kansas Legislature as K.S.A. 76-12b01, et. seq.
- 2. Purpose - K.S.A. 76-12b01, et. seq., is a comprehensive act concerning state institutions for the mentally retarded. It contains detailed provisions for the admission, discharge, and transfer of patients from one state institution for the mentally retarded to any other institution under the jurisdiction of the Secretary. K.S.A. 76-1411 controls discharge of persons from Parsons State Hospital and Training Center, K.S.A. 76-1501(c) controls transfers of patients in state institutions to Norton State Hospital, K.S.A. 76-1617 concerns the custody and discharge of persons in Winfield State Hospital, and K.S.A. 76-1602(c) concerns the admission and transfer of patients at the Kansas Neurological Institute. These statutes are no longer needed, and can be a source of confusion for staff attempting to locate what authority they must follow with respect to admissions, discharges, and transfers from state institutions for the mentally retarded.
- 4. Effect of Passage - Passage of this bill would simplify and clarify the authority of the Secretary in admitting, discharging and transferring patients at state institutions for the mentally retarded.
- 5. SRS Recommendation - The Department supports this bill for the reasons stated in the above sections.

Robert C. Harder  
 Secretary  
 Social and Rehabilitation Services  
 296-3271  
 1 April 1985

4/2/85  
 Attch. I

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Statement Regarding H.B. 2065

1. Title - This bill concerns the privilege pertaining to records of residents and former residents of state institutions for the mentally retarded; amending K.S.A. 76-12b01, et. seq.
2. Purpose - The purpose of this bill is to grant a privilege from disclosure with certain exceptions for records maintained on behalf of residents and former residents of state institutions for the mentally retarded.
3. Background - The 1984 Kansas Legislature passed a new comprehensive act concerning state institutions for the mentally retarded by enacting H.B. 2697, I.S.A. 76-12b01, et. seq. The act did not have any specific regulations concerning the confidentiality or privilege status of treatment records pursuant to the provisions of K.S.A. 59-2931. Records maintained by state institutions for the mentally retarded should enjoy the same or similar privilege as those afforded to psychiatric patients.
4. Effect of Passage - The passage of this bill would grant a specific privilege for records maintained on behalf of residents or former residents of state institutions for the mentally retarded. If the bill is not passed, the status to be afforded such records would be extremely unclear, and would result in falling back upon specific provider privileges such as the physician/patient privilege(K.S.A. 60-427), social work privilege (K.S.A. 75-5360), and psychologist privilege (K.S.A. 74-5323). It does not seem fair to provide different privileges depending upon what type of professional actually provided services.
5. SRS Recommendation - The department supports the bill because records of residents and former residents at state institutions for the mentally retarded should enjoy a privilege similar to that which is afforded to psychiatric patients in state psychiatric hospitals, and to avoid unnecessary difficulty associated with applying specific provider privileges to resident records.

Robert C. Harder  
 Secretary  
 Social and Rehabilitation Services  
 296-3271  
 1 April 1985

4/2/85  
 Attach. II

# Kansas Advocacy & Protective Services for the Developmentally Disabled, Inc.



Suite 2, the Denholm Bldg.  
513 Leavenworth  
Manhattan, KS 66502  
(913) 776-1541

**Chairperson**  
R. C. (Pete) Loux  
Wichita  
TO: The Senate Judiciary Committee  
Senator Robert Frey, Chairperson

**Vice Chairperson**  
Robert Anderson  
Ottawa  
FROM: Kansas Advocacy and Protective Services  
for the Developmentally Disabled, Inc.  
R.C. Loux, Chairperson

**Secretary**  
Robert Epps  
Topeka  
RE: H.B. 2065

DATE: April 2, 1985

**Treasurer**  
Neil Benson  
El Dorado

Rep. Rochelle Chronister  
Neodesha  
Sen. Norma Daniels  
Valley Center  
Sen. Ross O. Doyen  
Concordia  
KAPS assists developmentally disabled children and adults in gaining access to the rights and services to which they are entitled. We are a private, non-profit corporation created specifically to meet the protection and advocacy requirements of the Developmental Disabilities Act. There are 54 such agencies serving our states and territories.

Mary Hohman  
Topeka  
Harold James  
Hugoton  
Rep. Ruth Luzzati  
Wichita  
James Magg  
Topeka  
W. Patrick Russell  
Topeka  
P.L. 98-527, which amends the Developmental Disabilities Act (P.L. 94-103 as amended by P.L. 95-602), contains new provisions that require State action. One of these provisions is as follows. "Assurance that the Protection and Advocacy System is able to obtain access to records of a person with developmental disabilities who reside in a facility for persons with developmental disabilities if: (a) a complaint has been received by the system from or on behalf of such person; and (b) such person does not have a legal guardian or the State or the designee of the State is the legal guardian of such person. (Section 142 (a) (2) (D) (i) and (ii))

W. H. Weber  
Topeka  
The amended language contained in New Section 2 on page 2 beginning line 67 will, in our opinion, assure that Kansas is in compliance with the new requirements.

**Liaison to the Governor**  
Robert Epps

**Executive Director**  
Joan Strickler  
Respectfully submitted,

Joan Strickler  
Executive Director

Attch. III  
4/2/85

4-2-85  
Strickler

0047 investigator will not disclose the name of any resident or former  
0048 resident to any person not otherwise authorized by law to re-  
0049 ceive that information.

0050 (3) Upon the order of any court of record after a determina-  
0051 tion by the court that the records are necessary for the conduct of  
0052 proceedings before it and are otherwise admissible ~~in~~ as evi-  
0053 dence.

0054 (4) To appropriate administrative or professional staff of any  
0055 licensed Kansas facility for the mentally retarded for the pur-  
0056 poses of promoting continuity of care in the community follow-  
0057 ing discharge or conditional placement. The consent of the  
0058 resident or former resident, or if applicable the parent or guard-  
0059 ian of the resident or former resident, shall not be necessary to  
0060 release information to licensed Kansas facilities for the mentally  
0061 retarded.

delete

(4)

0062 (5) To any other person if such disclosure is required by  
0063 federal law or regulation implementing a federal grant-in-aid  
0064 program in which the state is participating.

(5)

0065 (6) As provided in section 2.

0066 (b) Willful violation of this section is a class C misdemeanor.  
0067 New Sec. 2. (a) The agency designated as the developmental  
0068 disabilities protection and advocacy agency pursuant to P.L.  
0069 94-103, as amended, shall have access to records of a person with  
0070 a mental retardation or other developmental disability who re-  
0071 sides in a public or private facility for persons with develop-  
0072 mental disabilities if:

0073 (1) A complaint has been received by the agency from or on  
0074 behalf of such person; and

0075 (2) such person does not have a legal guardian or the state or  
0076 a designee of the state is the legal guardian of such person.

0077 (b) Willful failure to allow access to records as provided by  
0078 subsection (a) is a class C misdemeanor.

0079 Sec. 2 3. This act shall take effect and be in force from and  
0080 after its publication in the statute book.

Attach. III