

Approved February 25, 1986
Date

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 February 12, 1986 in room 514-S of the Capitol.

All members ~~were~~ present ~~except~~: Senators Frey, Hoferer, Burke, Feleciano,
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:

Peter Rinn, Social and Rehabilitation Services
John Scheirman, Kansas Department of Transportation
Ron Miles, State Boards of Indigents
Art Griggs, Department of Administration
Jean Sagan, Board of Regents
Representative Sandy Duncan

Senate Bill 479 - Application of Administrative Procedure Act to all
state agencies.

Peter Rinn, Social and Rehabilitation Services, appeared to discuss the Administrative Procedure Act and its proposed application to the State Department of Social and Rehabilitation Services. He stated he would not go over the proposed amendments until the judicial council has considered them. Copies of testimony of Robert C. Harder with proposed amendments are attached (See Attachments I).

John Scheirman, Kansas Department of Transportation, testified they are not in opposition to being brought under the Kansas Administrative Procedure Act. They have amendments they would like to have considered which are outlined in the attached memorandum (See Attachment II).

Ron Miles, State Boards of Indigents, recommended they be included in the list of exemptions. He explained their proposal to the committee. He said he has talked to Matt Lynch concerning their proposal. A copy of the proposed amendment is attached (See Attachment III).

Art Griggs, Department of Administration, presented proposed amendments to the bill, and stated the amendments will be submitted to the judicial council (See Attachment IV).

Jean Sagan, Board of Regents, pointed out concerns with the bill relating to student appeals, residency determination, administrative burden, and altering definition of order to exempt academic decisions. She presented proposed amendments.

Representative Sandy Duncan stated the subcommittee of the judicial council plan to meet throughout the legislative session on issues that have been brought up. The chairman stated the committee will take up the bill for consideration knowing there is continuing work going on by the subcommittee and knowing the effective date of this legislation is July, 1987.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY,
room 514-S, Statehouse, at 10:00 a.m./~~p.m.~~ on February 12, 1986

Senate Bill 313 - Reporting of crimes under state and local law.

Following committee discussion, Senator Talkington moved to report the bill adversely. Senator Feleciano seconded the motion, and the motion carried.

Sub. for House Bill 2050 - Treatment Act for Mentally ill Persons.

The chairman explained the subcommittee met for two days and heard all proposals for amendments. A balloon copy of the bill with the proposed amendments were passed out to committee members (See Attachment V). The chairman then went through the bill and explained each proposed amendment. Following the explanation, Senator Burke moved the committee adopt the proposed amendments. Senator Langworthy seconded the motion, and the motion carried. The chairman requested committee members be prepared to discuss the bill on Friday.

Senator Winter presented a bill request concerning scalping to make it unclassified misdemeanor. Since it was time to adjourn, this bill request will be taken up tomorrow morning.

The meeting adjourned.

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

GUEST LIST

COMMITTEE: SENATE JUDICIARY COMMITTEE

DATE: 2-12-86

NAME (PLEASE PRINT)	ADDRESS	COMPANY/ORGANIZATION
KETH R LANDIS	TOPEKA	CHRISTIAN SERVICE COMMITTEE ON PUBLICATION FOR KANSAS
Jean S. Sagan	TOPEKA	Bd. of Regents
PATRICIA HENSHALL	TOPEKA	OJA
Math Lynch	"	Judicial Council
Bill Bein	"	SRS
Charles V. Hamm	Forbes Field - Topeka	KDHE
John Wine	Topeka	Sec. of St.
Benjamin C. Wood	Topeka	IDS
Pam Spoholm	Topeka	Ks Ins Dept.
Bice SNEED	TOPEKA	Ks Assoc. of Defense Council
Carol Frouma	"	SRS
Pete R.	Topeka	SRS
Jim Clark	Topeka	KCDAA
Faith Forette	"	Administration
Art Briggs	"	"
Ken Mase	"	"
Jo Jenkins	"	KCC
John R. Scherman	Topeka	KDOT
Bob Nile	✓	RIDS
Belva Ott	Wichita	PPK, Inc
Tom Smith	Topeka	Ks Bar Assn
Ed DESOIGNIE	TOPEKA	KDOT
PAT BARNES	TOPEKA	Ks Motor Car Dealers Assn
T. O. Anderson	Topeka	KSCRA
Kelle Roesch	Lawrence	KTLA

STATE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Testimony Concerning SB 479

I am appearing today to discuss the Administrative Procedure Act and its proposed application to the State Department of Social and Rehabilitation Services.

First, the Department is contemplating being brought under the Administrative Procedure Act with some reluctance. SRS has a long and proud tradition of guaranteeing administrative due process through the use of our fair hearing procedures which are currently set forth in Kansas Administrative Regulations, Article 7, Chapter 30. Persons practicing before the agency and, yes, our own staff, have become comfortable with such procedures over the years. We do not wish to be penalized for our farsightedness and responsiveness.

Secondly, however, we do recognize the desire for more uniform procedures among state agencies. Therefore, Secretary Harder requested our legal staff to review SB 479 for the purpose of making proposed amendments based on the assumption that SRS would soon come under the Act.

The proposed amendments handed out today are the culmination of such review. The amendments cover several areas, including: agency operations to be excluded from the Act, time limitations, reasons for not providing an adjudicative proceeding, discovery, default of a party, the closing of hearings for cause and the

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enforcement of orders. Such amendments are based upon our experience in conducting thousands of fair hearings over the years. The amendments are designed to meet the special needs of SRS and to expedite the hearing process without interfering with a person's right to receive administrative due process and administrative justice before state agencies.

In summary, the State Department of Social and Rehabilitation Services has no objections with coming under the Administrative Procedure Act so long as its special needs as an agency are recognized. Thank you.

Robert C. Harder
Office of the Secretary
Social and Rehabilitation Services
296-3271
February 10, 1986

SENATE BILL No. 479

By Committee on Judiciary

1-27

0016 AN ACT concerning the Kansas administrative procedure act; K.S.A. 75-3306
0017 relating to the application thereof; amending ~~K.S.A. 1985~~
0018 Supp. 77-502, 77-503, 77-508, 77-509, and 77-511 and repealing , 77-516, 77-520, 77-522, 77-526 and 77-527
0019 the existing sections; also repealing K.S.A. 1985 Supp. 44-
0020 1044.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 1985 Supp. 77-502 is hereby amended to
0023 read as follows: 77-502. As used in this act:

0024 (a) "State agency" means any officer, department, bureau,
0025 division, board, authority, agency, commission or institution of
0026 this state, except the judicial and legislative branches of state
0027 government and political subdivisions of the state, which is
0028 authorized by law to administer, enforce or interpret any law of
0029 this state.

0030 (b) "Agency head" means an individual or body of individu-
0031 als in whom the ultimate legal authority of the state agency is
0032 vested by any provision of law.

0033 (c) "License" means a franchise, permit, certification, ap-
0034 proval, registration, charter or similar form of authorization re-
0035 quired by law for a person to engage in a profession or occupa-
0036 tion.

0037 (d) "Order" means a state agency action ~~which pertains to a~~
0038 ~~license and is~~ of particular applicability ~~to a person that deter-~~
0039 ~~mines the legal rights, duties, privileges, immunities or other~~
0040 ~~legal interest of one or more specific persons.~~

0041 (e) "Party to state agency proceedings," or "party" in context
0042 so indicating, means:

- 0043 (1) A person to whom an order is specifically directed; ~~or~~
0044 (2) a person named as a party to a state agency proceeding or

0045 ~~allowed to intervene or participate as a party in the proceeding~~ ; or

0046 (f) "Person" means an individual, partnership, corporation,
0047 association, political subdivision or unit thereof or public or
0048 private organization or entity of any character, and includes
0049 another state agency.

(3) the official or administrative unit whose order is being appealed.

0050 (g) "Political subdivision" means political or taxing subdivi-
0051 sions of the state, including boards, commissions, authorities,
0052 councils, committees, subcommittees and other subordinate
0053 groups or administrative units thereof, receiving or expending
0054 and supported in whole or in part by public funds.

0055 Sec. 2. K.S.A. 1985 Supp. 77-503 is hereby amended to read
0056 as follows: 77-503. (a) This act ~~applies only governs procedures~~
0057 *for the formulation and issuance of any order except to the*
0058 extent that other statutes expressly provide ~~that the provisions of~~
0059 ~~this act govern proceedings under those statutes such proce-~~
0060 ~~dures.~~

0061 (b) This act creates only procedural rights and imposes only
0062 procedural duties. They are in addition to those created and
0063 imposed by other statutes.

0064 Sec. 3. K.S.A. 1985 Supp. 77-508 is hereby amended to read
0065 as follows: 77-508. (a) *Except as provided by this section,* an
0066 adjudicative proceeding shall be the process for formulating and
0067 issuing an order; ~~unless the order is a decision.~~

0068 (a) ~~To issue or not to issue a complaint, summons or similar~~
0069 ~~accusation;~~

0070 (b) ~~to initiate or not to initiate an investigation, prosecution~~
0071 ~~or other proceeding before the state agency, another agency or a~~
0072 ~~court; or~~

0073 (c) ~~under K.S.A. 1985 Supp. 77-510, not to conduct an ad-~~
0074 ~~judicative proceeding.~~

0075 (b) *Unless prohibited by law, a state agency may issue an*
0076 *order subject to the right of a person to whom the order is*
0077 *directed to request an appropriate adjudicative proceeding*
0078 *within 15 days after service of the order. The state agency may*
0079 ~~extend the time for requesting an adjudicative proceeding for~~
0080 ~~good cause shown. If an adjudicative proceeding is not re-~~
0081 ~~quested, the order shall become effective upon the expiration of~~

0082 *the time for requesting an adjudicative proceeding. If an adjudi-*
0083 *cative proceeding is requested, any order resulting from the*
0084 *proceeding shall become effective in accordance with the pro-*
0085 *visions of this act. This subsection does not preclude a state*
0086 *agency from taking immediate action to protect the public*
0087 *interest in accordance with K.S.A. 1985 Supp. 77-536 and*
0088 *amendments thereto.*

0089 *(c) The following state agency actions, whether or not in-*
0090 *cluded within the definition of order, shall not require an*
0091 *adjudicative proceeding under this act:*

0092 *(1) A decision to issue or not to issue a complaint, summons*
0093 *or similar accusation;*

0094 *(2) a decision to initiate or not to initiate an investigation,*
0095 *prosecution or other proceeding before the state agency, an-*
0096 *other agency or a court;*

0097 *(3) a decision under K.S.A. 1985 Supp. 77-510 and amend-*
0098 *ments thereto not to conduct an adjudicative proceeding;*

0099 *(4) a determination under K.S.A. 44-1005 or 44-1019, and*
0100 *amendments thereto, that no probable cause exists for crediting*
0101 *a complaint;*

0102 *(5) decisions pertaining to hiring, evaluation or termination*
0103 *of employees, reclassification of employees or other personnel*
0104 *matters, other than orders of the state civil service board;*

0105 *(6) fiscal decisions relating to the budget process;*

0106 *(7) decisions pertaining to letting of contracts and purchase*
0107 *of materials or services;*

0108 *(8) awarding of grants;*

0109 *(9) management decisions pertaining to internal agency*
0110 *policy and procedure;*

0111 *(10) decisions pursuant to the open records act pertaining to*
0112 *disclosure or copying of public records;*

0113 *(11) decisions pursuant to K.S.A. 75-4317 et seq., and*
0114 *amendments thereto, pertaining to access to meetings of public*
0115 *bodies;*

0116 *(12) approval of plans, specifications or other matters pre-*
0117 *liminary to the granting of a license or permit;*

0118 *(13) decisions regarding management, discipline or release*

0119 of persons in the custody of the secretary of corrections;
0120 (14) decisions of the Kansas parole board relating to parole
0121 or revocation of parole; ~~and~~

0122 (15) decisions relating to the granting or denial of benefits
0123 pursuant to the employment security law; _____;

0124 Sec. 4. K.S.A. 1985 Supp. 77-509 is hereby amended to read
0125 as follows: 77-509. (a) A state agency may provide an adjudicative
0126 proceeding at any time with respect to an order within the
0127 agency's jurisdiction.

0128 (b) A state agency shall provide an opportunity for an ad-
0129 judicative proceeding with respect to an order upon the written
0130 application of any person, unless:

0131 (1) The state agency lacks jurisdiction of the subject matter;

0132 (2) resolution of the matter requires the state agency to exer-
0133 cise discretion within the scope of subsection ~~(a)~~ (c) of K.S.A.
0134 1985 Supp. 77-508 and amendments thereto;

0135 (3) a statute vests the state agency with discretion to conduct
0136 or not to conduct an adjudicative proceeding before issuing an
0137 order to resolve the matter and, in the exercise of that discretion,
0138 the state agency has determined not to conduct an adjudicative
0139 proceeding;

0140 (4) resolution of the matter does not require the state agency
0141 to issue an order that determines the applicant's legal rights,
0142 duties, privileges, immunities or other legal interests;

0143 (5) the matter was not timely submitted to the state agency;
0144 ~~or~~

0145 (6) the matter was not submitted in a form substantially
0146 complying with any applicable provision of law; _____;

0147 (c) An adjudicative proceeding commences when the state
0148 agency or a presiding officer:

0149 (1) Notifies a party that a prehearing conference, hearing or
0150 other stage of an adjudicative proceeding will be conducted; or

0151 (2) begins to take action on a matter that appropriately may
0152 be determined by an adjudicative proceeding, unless this action
0153 is:

0154 (A) An investigation for the purpose of determining whether
0155 an adjudicative proceeding should be conducted; or

(16) decisions relating to the granting or denial of assistance benefits pursuant to a social welfare program operated under the auspices of the secretary of social and rehabilitation services;

(17) decisions regarding management, discipline or release of persons placed in or committed to a state youth center;

(18) decisions relating to the admission, treatment, conditional release, or discharge of persons at state psychiatric hospitals or state institutions for the mentally retarded; and

(19) decisions relating to the administration of the support enforcement program set forth in K.S.A. 39-753 et seq. and amendments thereto except for federal debt set off activities.

(7) the request for an adjudicative proceeding concerns the validity of a federal or state law or regulation; or

(8) such person has failed to exhaust an available pre-appeal administrative remedy.

0156 (B) a decision which, under subsection ~~(a)~~ (c) of K.S.A. 1985
0157 Supp. 77-508 *and amendments thereto*, the state agency may
0158 make without conducting an adjudicative proceeding.

0159 Sec. 5. K.S.A. 1985 Supp. 77-511 is hereby amended to read
0160 as follows: 77-511. (a) Except to the extent that the time limits in
0161 this subsection are inconsistent with limits established by an-
0162 other statute for any stage of the adjudicative proceedings, a state
0163 agency shall process an application for an order, other than a
0164 declaratory order, as follows:

0165 (1) Within 30 days after receipt of the application, the state
0166 agency shall examine the application, notify the applicant of any
0167 apparent errors or omissions and notify the applicant of the
0168 name, official title, mailing address and telephone number of a
0169 state agency member or employee who may be contacted re-
0170 garding the application;

0171 (2) within 90 days after receipt of the application or of the
0172 response of the applicant to a timely request made by the state
0173 agency pursuant to paragraph (1), the state agency shall:

0174 (A) Approve or deny the application, in whole or in part, on
0175 the basis of emergency or summary adjudicative proceedings, if
0176 those proceedings are available under this act for disposition of
0177 the matter;

0178 (B) commence a formal adjudicative hearing or a conference
0179 adjudicative hearing in accordance with this act; ~~or~~

0180 (C) *issue an order and notify the applicant of the right to*
0181 *request an adjudicative proceeding pursuant to subsection (b) of*
0182 *K.S.A. 1985 Supp. 77-508 and amendments thereto; or*

0183 (D) dispose of the application in accordance with K.S.A. 1985
0184 Supp. 77-510 *and amendments thereto.*

0185 (b) *A state agency shall process a request for an adjudicative*
0186 *proceeding pursuant to subsection (b) of K.S.A. 1985 Supp.*
0187 *77-508 and amendments thereto as follows:*

0188 (1) *Within 30 days after receipt of the request and, if the*
0189 *state agency has not previously done so, the state agency shall*
0190 *notify the applicant of the name, official title, mailing address*
0191 *and telephone number of a state agency member or employee*
0192 *who may be contacted regarding the request; and*

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0193 (2) within 90 days after receipt of the request the state
0194 agency shall:

0195 (A) Dispose of the matter, in whole or in part, on the basis of
0196 emergency or summary adjudicative proceedings, if those pro-
0197 ceedings are available under this act for disposition of the
0198 matter;

0199 (B) commence a formal or conference adjudicative proceed-
0200 ing in accordance with this act; or

0201 (C) dispose of the matter in accordance with K.S.A. 1985
0202 Supp. 77-510 and amendments thereto.

0203 (c) If a timely and sufficient application has been made for
0204 renewal of a license with reference to any activity of a continuing
0205 nature, the existing license does not expire until the state agency
0206 has taken final action upon the application for renewal or, if the
0207 state agency's action is unfavorable, until the last day for seeking
0208 judicial review of the state agency's action or a later date fixed by
0209 the reviewing court.

Sec. 6. K.S.A. 1985 Supp. 77-516 is hereby amended to read as follows: 77-516.

The presiding officer designated to conduct the hearing may conduct a prehearing conference. If the conference is conducted:

(a) The state agency may assign a presiding officer for the prehearing conference, exercising the same discretion as is provided by K.S.A. 1985 Supp. 77-514 concerning the selection of a presiding officer for a hearing.

(b) The presiding officer for the prehearing conference shall set the time and place of the conference and give reasonable notice to all parties and to all persons who have filed written petitions to intervene in the matter.

(c) The notice shall include:

(1) The names and mailing addresses of all parties and other persons to whom notice is being given by the presiding officer;

(2) the name, official title, mailing ad-

dress and telephone number of any counsel or employee who has been designated to appear for the state agency;

(3) the official file or other reference number, the name of the proceeding and a general description of the subject matter;

(4) a statement of the time, place and nature of the prehearing conference;

(5) a statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

(6) the name, official title, mailing address and telephone number of the presiding officer for the prehearing conference;

(7) a statement that at the prehearing conference the proceeding, without further notice, may be converted into a conference adjudicative hearing or a summary adjudicative proceeding for disposition of the matter as provided by this act; and

(8) a statement that a party who fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding may be held in default under this act.

(d) The notice may include any other matters that the presiding officer considers desirable to expedite the proceedings.

and may have its application for adjudicative proceeding dismissed

Sec. 7. K.S.A. 1985 Supp. 77-520 is hereby amended to read as follows: 77-520.

(a) If a party fails to attend or participate in a prehearing conference, hearing or other stage of an adjudicative proceeding, the presiding officer may serve upon all parties written notice of a proposed default order, including a statement of the grounds.

(b) Within 7 days after service of a proposed default order, the party against whom it was issued may file a written motion requesting that the proposed default order be vacated and stating the grounds relied upon. During the time within which a party

may file a written motion under this subsection, the presiding officer may adjourn the proceedings or conduct them without the participation of the party against whom a proposed default order was issued, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings.

(c) The presiding officer shall either issue or vacate the default order promptly after expiration of the time within which the party may file a written motion under subsection (b).

(d) After issuing a default order, the presiding officer shall conduct any further proceedings necessary to complete the adjudication without the participation of the party in default and shall determine all issues in the adjudication, including those affecting the defaulting party.

The presiding officer in lieu of determining the issues affecting the defaulting party may, unless otherwise prohibited by law, dismiss such party's application for an adjudicative proceeding.

Sec. 8. K.S.A. 1985 Supp. 77-522 is hereby amended to read as follows: 77-522.

(a) The presiding officer may issue subpoenas, discovery orders and protective orders in accordance with the rules of civil procedure.

(b) Subpoenas and orders issued under this section may be enforced pursuant to the provisions of the act for judicial review and civil enforcement of agency actions.

Discovery shall be under the direction of the presiding officer and shall be limited to the issues raised in a party's application for an adjudicative proceeding.

Sec. 9. K.S.A. 1985 Supp. 77-526 is hereby amended to read as follows: 77-526.

(a) If the presiding officer is the agency head, the presiding officer shall render a final order.

(b) If the presiding officer is not the agency head, the presiding officer shall render an initial order, which becomes a final order unless reviewed in accordance with K.S.A. 1985 Supp. 77-527 or unless otherwise required by law to be finally determined by the agency head.

(c) A final order or initial order shall include, separately stated, findings of fact, conclusions of law and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief. An initial order shall include a statement of any circumstances under which the initial order, without further notice, may become a final order.

(d) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.

(e) If a substitute presiding officer is appointed pursuant to K.S.A. 1985 Supp. 77-514, the substitute presiding officer shall use any existing record and may conduct any further proceedings appropriate in the interests of justice.

(f) The presiding officer may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.

(g) A final order or initial order pursuant to this section shall be rendered in writing and served within ~~30~~ days after conclusion of the hearing or after submission of proposed findings in accordance with subsection (f) unless this period is waived or extended with the written consent of all parties or for good cause shown.

(h) The presiding officer shall cause copies of the order to be served on each party and, if the order is an initial order, on the agency head in the manner prescribed by K.S.A. 1985 Supp. 77-531.

Sec. 10. K.S.A. 1985 Supp. 77-527 is hereby amended to read as follows: 77-527.

(a) The agency head, upon its own motion may, and upon petition by any party or when required by law shall, review an initial order, except to the extent that:

(1) A provision of law precludes or limits state agency review of the initial order; or

(2) the agency head (A) determines to review some but not all issues, or not to exercise any review, (B) delegates its authority to review the initial order to one or more persons, or (C) authorizes one or more persons to review the initial order, subject to further review by the agency head.

(b) A petition for review of an initial order must be filed with the agency head, or with any person designated for this purpose by rule and regulation of the state agency, within 15 days after service of the initial order. If the agency head on its own motion decides to review an initial order, the agency head shall give written notice of its intention to review the initial order within 15 days after its service.

(c) The petition for review shall state its basis. If the agency head on its own motion gives notice of its intent to review an initial order, the agency head shall identify the issues that it intends to review.

(d) In reviewing an initial order, the agency head shall exercise all the decision-making power that the agency head would have had to render a final order had the agency head presided over the hearing, except to the extent that the issues subject to review are limited by a provision of law or by the agency head upon notice to all parties.

or designee

(e) The agency head shall afford each party an opportunity to present briefs and may afford each party an opportunity to present oral argument.

or designee

(f) The agency head ~~may render a final order disposing of the proceeding or may remand the matter for further proceedings with instructions to the person who rendered the initial order. Upon remanding a matter, the agency head may order such temporary relief as is authorized and appropriate.~~ or designee

(g) A final order or an order remanding the matter for further proceedings shall be rendered in writing and served within 30 days after receipt of briefs and oral argument unless that period is waived or extended with the written consent of all parties or for good cause shown.

(h) A final order or an order remanding the matter for further proceedings under this section shall identify any difference between this order and the initial order and shall include, or incorporate by express reference to the initial order, all the matters required by subsection (c) of K.S.A. 1985 Supp. 77-526.

(i) The agency head shall cause copies of the final order or order remanding the matter for further proceedings to be served on each party in the manner prescribed by K.S.A. 1985 Supp. 77-531.

Sec. 11. K.S.A. 75-3306 is hereby amended to read as follows: 75-3306.

~~(a) The secretary of social and rehabilitation services shall provide a fair hearing for any person who is an applicant, client, inmate, other interested person or taxpayer who appeals from the decision or final action of any agent or employee of the secretary. The hearing shall be conducted by an employee or employees of the secretary of social and rehabilitation services to be designated by the secretary as an appeals referee or committee. The secretary of social and rehabilitation services shall prescribe the procedure for hearing all appeals.~~

It shall be the duty of the secretary of social and rehabilitation services to have available in all intake offices, during all office hours, forms for filing complaints for hearings, and appeal forms with which to appeal from the decision of the agent or employee of the secretary. The forms shall be prescribed by the secretary of social and rehabilitation services and shall have printed on or as a part of them the basic rules and regulations for hearings and appeals prescribed by state law and the secretary of social and rehabilitation services. (a)

(b) The presiding officer may close any portion of a hearing conducted under K.S.A. 1985 Supp. 77-523 when matters made confidential pursuant to federal or state law or regulation are under consideration.

(c) The secretary may enforce any order issued pursuant to subsection (b) of K.S.A. 1985 Supp. 77-508 and amendments thereto prior to the disposition of a party's application for an adjudicative proceeding under the administrative procedure act unless prohibited from such action by federal or state statute (exclusive of the administrative procedure act except for K.S.A. 1985 Supp. 77-511(c) and amendments thereto), regulation or court decision.

~~(b)~~ The secretary of social and rehabilitation services shall have authority to investigate (1) any claims and vouchers and persons or businesses who provide services to the secretary of social and rehabilitation services or to welfare recipients, (2) the eligibility of persons to receive assistance and (3) the eligibility of providers of services. (d)

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(e) The secretary of social and rehabilitation services shall have authority, when hearing appeals or conducting investigations as provided for in this section, to issue subpoenas; compel the attendance of witnesses at the place designated in this state; compel the production of any records, books, papers or other documents considered necessary; administer oaths; take testimony; and render decisions. A copy of each decision shall be delivered to the appellant, provider of services or agent or employee of the secretary, as the case may be, who shall comply with the decision. If a person refuses to comply with any subpoena issued under this section or to testify to any matter regarding which the person may lawfully be questioned, the district court of any county, on application of the secretary, may issue an order requiring the person to comply with the subpoena and to testify, and any failure to obey the order of the court may be punished by the court as a contempt of court. Unless incapacitated, the person placing a claim or defending a privilege before the secretary shall appear in person and may not be excused from answering questions and supplying information, except in accordance with the person's constitutional rights and lawful privileges.

12.

K.S.A. 75-3306 and

0210 Sec. 6. K.S.A. 1985 Supp. 44-1044, 77-502, 77-503, 77-508,
 0211 77-509, and 77-511 are hereby repealed.

, 77-516, 77-520, 77-522, 77-526 and 77-527

0212 Sec. 7. This act shall take effect and be in force from and
 0213 after July 1, 1987, and its publication in the statute book.

13.

Kansas Department of Transportation

OFFICE OF CHIEF COUNSEL
February 12, 1986

MEMORANDUM TO: THE HONORABLE ROBERT FREY, CHAIRMAN
SENATE COMMITTEE ON JUDICIARY

FROM: MICHAEL B. REES
CHIEF COUNSEL, KANSAS DEPARTMENT OF TRANSPORTATION

REGARDING: SENATE BILLS 478 and 479

Mr. Chairman, members of the Committee, I would like to briefly discuss the Kansas Department of Transportation's views concerning the proposed amendments to the Kansas Administrative Procedures Act. As you are aware, the provisions of KAPA and the proposed amendments are complex, and their implications are far-reaching. However, keeping in mind the Committee's time restraints, these comments are preliminary and are limited to a few key items of concern to our agency which we have identified at this stage.

The Kansas Department of Transportation was not included within the scope of the original KAPA bill as enacted in 1984. We have, therefore, reviewed the proposed amendments with the assumption that they would bring about significant changes in the way KDOT discharges its duties. As a basic premise, we have recognized that KDOT is not primarily a regulatory agency, but rather is charged with the duty to design, construct, develop and maintain major systems of publicly funded improvements to the State's infrastructure. It is true, however, that the Secretary is charged with a number of functions which would, if brought under KAPA, constitute "orders" as defined in Senate Bill 479, Section 1 (d). These range from matters such as

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permits to operate vehicles with oversized loads on highways, and certification of public school bus drivers, to major disputes with contractors and suppliers over amounts of reimbursement due on highway and bridge construction projects.

A distinction between the contracting matters and the agency's other functions affecting outside parties is that all construction projects are voluntary agreements entered into by companies seeking profit, and these contracts incorporate by reference a comprehensive volume of standard specifications. This publication, which has been adopted by the Secretary pursuant to the authority of K.S.A. 68-404, 407 and 409, provides a system of internal agency appeal procedures for disputes arising on construction projects.

Although we recognize that it is the Legislature's prerogative to define KDOT's statutory authority, we are working from the assumption that the legislature does not intend, through amendments to KAPA, to fundamentally alter the Secretary's basic responsibilities to design, construct, maintain and develop the various modes and systems of transportation in Kansas. Rather, we view KAPA as clarifying the due process rights of outside parties who do business with or otherwise become subject to the authority of KDOT, but we assume that it is intended to do so without substantially impeding the progress of the department's public works projects and other duties.

From this vantage point, we have identified several provisions of KAPA in its proposed expanded version which may or may not be cause for concern, depending upon the legislature's intent as to their meaning. Taking these passages in what we believe to

be their intended context, we view KAPA as a positive development and one that KDOT can support. However, we would hope to see the ambiguities clarified through the legislative process rather than being left for resolution through costly and time-consuming litigation in the courts.

The provisions of concern are as follows:

1) In Senate Bill 478, Section 2, language is added stating that KAPA "governs procedures for the formulation and issuance of any order..." (emphasis added). The "formulation and issuance" language was included in the original KAPA at 77-508(a), and appears to have originated in the 1981 Model Act. It may have been inserted here during the drafting process for consistency. However, it suggests that the initial decisionmaking process for any agency action defined as an "order" is subject to the full due process framework of KAPA. This appears to conflict with new Section 3(b), which implies that an agency may issue an order prior to an adjudicative proceeding, with the affected party's rights to appeal only being triggered once the order has been issued. Based on observation of the hearings and drafting sessions of the Special Subcommittee to the Judicial Council last fall, we believe the latter interpretation is the reasonable and intended one, but a clarification of this issue is desirable. Otherwise, the literally thousands of "orders" which an agency like KDOT issues in a year could all conceivably be subject to adjudicative proceedings, unless they met the "immediate danger to the public" standard of emergency proceedings or fit within some other exception to the general mandate of KAPA.

2) In the same section 2(a) of S.B. 478, it is stated that KAPA governs any agency order "except to the extent that other statutes expressly provide such procedures." We assume that this exception would include such civil service and civil rights matters as are currently within the jurisdiction of the Kansas Commission on Civil Rights, the Kansas Civil Service Board, or the Equal Employment Opportunity Commission. Similarly, in Section 3(c)(5), the exception pertaining to internal agency personnel matters is assumed to include internal EEO matters, as well as labor union matters, which are of particular concern to KDOT. Clarification of both issues by the legislature may be advisable.

3) Section 3(c)(7) of S.B. 478 refers to the "letting of contracts" as a matter exempt from KAPA. The Kansas Department of Transportation desires to see this language clarified to include the awarding as well as letting of contracts. This is a major item for KDOT due to the number of highway and bridge contracts included in our annual construction and maintenance programs.

4) KDOT would like to suggest the following additions to the exceptions listed in Section 3(c) of S.B. 478:

- a) "Any decision regarding the need for, design of or location of any public improvement."
- b) "Any decision as to specifications governing the nature and quality of materials to be used in any public improvement project or the plans and specifications governing the design of any project prior to the time the contract for the project is awarded."

These amendments would establish legislative intent that the kinds of decisions traditionally involving engineering

Senator Robert Frey memorandum
February 12, 1986
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judgment in the undertaking of highway projects would remain within the discretion of the Secretary of Transportation as defined by the specific statutes designating his duties and authority.

KDOT thanks the Committee for this opportunity to address our concerns about the proposed amendments to the Kansas Administrative Procedures Act. We would be pleased to work with legislative staff in providing any additional information desired by the Committee concerning the potential impacts of this legislation upon the Kansas Department of Transportation.

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SENATE JUDICIARY COMMITTEE

Senate Bill 479

Section 3. (c) The following state agency actions, whether or not included within the definition of order, shall not require an adjudicative proceeding under this act:

Add - Line 124:

(16) decisions pursuant to K.S.A. 1985 Supp. 22-4507 and 22-4508 of the state board of indigents' defense services relating to payment of claims from attorneys and others.

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0119 of persons in the custody of the secretary of corrections;

0120 (14) decisions of the Kansas parole board relating to parole
0121 or revocation of parole; ~~and~~

0122 (15) decisions relating to the granting or denial of benefits
0123 pursuant to the employment security law;

0124 Sec. 4. K.S.A. 1985 Supp. 77-509 is hereby amended to read
0125 as follows: 77-509. (a) A state agency may provide an adjudicative
0126 proceeding at any time with respect to an order within the
0127 agency's jurisdiction.

0128 (b) A state agency shall provide an opportunity for an ad-
0129 judicative proceeding with respect to an order upon the written
0130 application of any person, unless:

0131 (1) The state agency lacks jurisdiction of the subject matter;

0132 (2) resolution of the matter requires the state agency to exer-
0133 cise discretion within the scope of subsection ~~(a)~~ (c) of K.S.A.
0134 1985 Supp. 77-508 and amendments thereto;

0135 (3) a statute vests the state agency with discretion to conduct
0136 or not to conduct an adjudicative proceeding before issuing an
0137 order to resolve the matter and, in the exercise of that discretion,
0138 the state agency has determined not to conduct an adjudicative
0139 proceeding;

0140 (4) resolution of the matter does not require the state agency
0141 to issue an order that determines the applicant's legal rights,
0142 duties, privileges, immunities or other legal interests;

0143 (5) the matter was not timely submitted to the state agency;
0144 or

0145 (6) the matter was not submitted in a form substantially
0146 complying with any applicable provision of law.

0147 (c) An adjudicative proceeding commences when the state
0148 agency or a presiding officer:

0149 (1) Notifies a party that a prehearing conference, hearing or
0150 other stage of an adjudicative proceeding will be conducted, or

0151 (2) begins to take action on a matter that appropriately may
0152 be determined by an adjudicative proceeding, unless this action
is:

0153 (A) An investigation for the purpose of determining whether
0154 an adjudicative proceeding should be conducted; or

(16) decisions relating to the state health care
benefits program and deferred compensation program;

(17) matters pertaining to the administration of the
state workmen's compensation self-insurance fund other
than workmen compensation proceedings before the director
of workers compensation or the director's appointees;

(18) adoption of temporary or permanent rules and
regulations pursuant to the rules and regulations filing
act and decisions of the state rules and regulations board;

(19) decisions of the secretary of administration
with respect to public use of state-owned buildings and
grounds under the management and control of the secretary;

(20) any actions of the division of accounts and
reports or the municipal accounting board setting require-
ments as to the form and content of reports, records or
accounts of state, county or municipal officers, institu-
tions or agencies and any action by the division of
accounts and reports in auditing such reports, records and
accounts;

(21) any actions by the division of accounts and
reports relating to pre-audits or post-audits of expendi-
tures by state agencies for the purchase of materials,
equipment, supplies or services by or for state agencies;

(22) actions of the secretary of administration
approving or disapproving mobile home tie downs and ground
anchors for sale or distribution in this state;

(23) decisions of the state employee awards commit-
tee in rendering merit awards to state employees for
meritorious suggestions and accomplishments;

(24) determinations of the Kansas public broad-
casting commission with respect to qualifications of
educational agencies or institutions, non-profit corpora-
tions and public television stations for state financial
assistance provided for by K.S.A. 75-4901 et seq. and
decisions relating to allocation and distribution of such
state funds to non-commercial public television stations;

(25) decisions by the secretary of administration as
to the applicability of any special assessment taxes to
property owned by the state; and

(26) actions of the department of administration in
administering the social security program for state or
local political subdivisions.

AT-IV

Atch. IV
S. Judiciary 2/12/86

[As Amended by House Committee of the Whole]

Session of 1985

Substitute for HOUSE BILL No. 2050

By Committee on Judiciary

3-6

0018 AN ACT concerning care and treatment of mentally ill persons;
 0019 amending K.S.A. 59-212, 59-2212, 59-2901, 59-2902, 59-2906
 0020 through 59-2912, 59-2914, 59-2914a, 59-2916, 59-2916a, 59-
 0021 2917, 59-2918, 59-2919, 59-2922, 59-2924, 59-2926, 59-2928,
 0022 59-2929, 59-2931, 59-2940, 59-3002, 59-3018, 75-5209 and 77-
 0023 201 and K.S.A. 1984 Supp. 22-3428, 22-3428a, 28-170, 38-1513
 0024 and 38-1614 and repealing the existing sections; also repeal-
 0025 ing K.S.A. 59-2904, 59-2915, 59-2917a, 59-2921, 59-2923 and
 0026 59-2942.

0027 *Be it enacted by the Legislature of the State of Kansas:*

0028 Section 1. K.S.A. 59-2901 is hereby amended to read as fol-
 0029 lows: 59-2901. This act shall be known and may be cited as the
 0030 ~~act for obtaining treatment for a mentally ill person treatment act~~
 0031 *for mentally ill persons.*

0032 Sec. 2. K.S.A. 59-2902 is hereby amended to read as follows:
 0033 59-2902. When used in this act:

0034 (a) *"Conditional release" means release of a patient who has*
 0035 *not been discharged but who is permitted by the head of the*
 0036 *treatment facility to live apart from the treatment facility pur-*
 0037 *suant to K.S.A. 59-2924 and amendments thereto.*

0038 (b) *"Discharge" means the final and complete release from*
 0039 *treatment, by either an order of a court pursuant to K.S.A.*
 0040 *59-2923 and amendments thereto or a treatment facility.*

0041 (c) *"Head of the treatment facility" means the administra-*
 0042 *tive director of a treatment facility.*

0043 (d) *"Involuntary patient" means a mentally ill person who is*
 0044 *receiving treatment under order of a court of competent juris-*
 0045 *dition.*

0046 (e) *"Lacks capacity to make an informed decision concern-*

or such person's designee

psychologists offered

*Atch. V
S. Judiciary 2/12/86*

2-12-86

A-V

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0047 ing treatment” means that the person, by reason of the person’s
0048 mental disorder or condition, is unable, despite conscientious
0049 efforts at explanation, to understand basically the nature and
0050 effects of hospitalization or treatment or is unable to engage in a
0051 rational decision-making process regarding hospitalization or
0052 treatment, as evidenced by inability to weigh the possible risks
0053 and benefits.

0054 (f) “Law enforcement officer” means any sheriff, regularly
0055 employed deputy sheriff, state highway patrol officer, regularly
0056 employed city police officer or a law enforcement officer of any
0057 county law enforcement department.

0058 (g) “Likely to cause harm to self or others” means that the
0059 person:

0060 (1) Is likely, in the reasonably foreseeable future, to cause ~~substantial~~ ^{psychological}
0061 physical injury or physical abuse to self or others or substantial
0062 damage to another’s property, as evidenced by behavior caus-
0063 ing, attempting or threatening such injury, abuse or damage; ~~or~~

0064 (2) is substantially unable, except for reason of indigency, to
0065 provide for any of the person’s basic needs, such as food,
0066 clothing, shelter, health or safety; ~~or~~

0067 ~~(3) is suffering severe and abnormal mental, emotional or~~
0068 ~~physical distress~~ causing a substantial deterioration of the per-
0069 son’s ability to function on the person’s own.

0070 (a) (h) “Mentally ill person” means any person who is men-
0074 tally impaired:

0072 (1) Is suffering from a severe mental disorder to the extent
0073 that such person is in need of treatment and who is dangerous to
0074 self or others and:

0075 (1) who lacks sufficient understanding or capacity to make
0076 responsible decisions with respect to the person’s need for
0077 treatment; or

0078 (2) who refuses to seek treatment. Proof of a person’s failure
0079 to meet the person’s basic physical needs, to the extent that the
0080 failure threatens such person’s life, shall be deemed as proof that
0081 the person is dangerous to self, except that;

0082 (2) lacks capacity to make an informed decision concerning
0083 treatment; and

0084 (3) *is likely to cause harm to self or others.*

0085 No person who is being treated by prayer in the practice of the
0086 religion of any church which teaches reliance on spiritual means
0087 alone through prayer for healing shall be determined to be a
0088 mentally ill person unless substantial evidence is produced upon
0089 which the district court finds that the proposed patient is dan-
0090 ~~gerous to self or likely to cause harm to self or others.~~

0091 (b) (i) "Patient" means a person who is an informal patient, a
0092 voluntary patient, a proposed patient, or an involuntary patient.

0093 (c) "Informal patient" means a person either receiving out-
0094 patient treatment at a treatment facility or who is admitted to a
0095 treatment facility pursuant to K.S.A. 50-2904.

0096 (d) "Voluntary patient" means a person, other than an infor-
0097 mal patient, who is receiving treatment at a treatment facility
0098 other than by order of any court.

0099 (e) "Proposed patient" means a person for whom an applica-
0100 tion pursuant to K.S.A. 50-2913 has been filed.

0101 (f) "Involuntary patient" means a mentally ill person who is
0102 receiving treatment under an order of a court of competent
0103 jurisdiction.

0104 (g) "Treatment facility" means any mental health clinic,
0105 psychiatric unit of a medical care facility, adult care home,
0106 physician or any other institution or individual authorized or
0107 licensed by law to give treatment to any patient.

0108 (h) (j) "Physician" means a person licensed to practice med-
0109 icine and surgery as provided by the Kansas healing arts act or a
0110 person who is employed by a Kansas state hospital or by an
0111 agency of the United States and who is authorized by either
0112 government to practice medicine and surgery.

0113 (i) "Head of the treatment facility" means the administrative
0114 director of a treatment facility if the administrative director is a
0115 physician or, if the administrative director is not a physician, the
0116 chief medical officer or a physician designated by the chief
0117 medical officer.

0118 (k) "Proposed patient" means a person for whom an appli-
0119 cation pursuant to K.S.A. 59-2913 and amendments thereto has
0120 been filed.

, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior causing, attempting or threatening such injury, abuse or damage

Christian Scientists

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0121 (l) "Psychologist" means a certified psychologist, as defined
0122 by K.S.A. 74-5302 and amendments thereto.

0123 (m) "Restraints" means the application of any devices, other
0124 than human force alone, to any parts of the body of the patient
0125 for the purpose of preventing the patient from causing injury to
0126 self or others.

0127 (n) "Seclusion" means the placement of a patient, alone, in a
0128 locked room, where the patient's freedom to leave is restricted
0129 and where the patient is not under continuous observation.

0130 (o) "Severe mental disorder" means a clinically significant
0131 behavioral or psychological syndrome or pattern associated
0132 with either a painful symptom or serious impairment in one or
0133 more important areas of functioning and involving substantial
0134 behavioral, psychologic or biologic dysfunction. "Severe mental
0135 disorder" does not include a condition which is caused by the
0136 use of chemical substances or for which the primary diagnosis is
0137 antisocial personality.

0138 (i) (p) "Treatment" means any necessary services that are in
0139 the best interests of the physical and service intended to promote
0140 the mental health of the patient and rendered by or a qualified
0141 professional ~~under the supervision of a physician or psycholo-~~
0142 ~~gist.~~

0143 (k) "Discharge" means the final and complete release from
0144 treatment, by either an order of a court pursuant to K.S.A.
0145 50-2023 or a treatment facility.

0146 (l) "Conditional release" means release of a patient who has
0147 not been discharged but who is permitted by the head of the
0148 treatment facility to live apart from the treatment facility pursu-
0149 ant to K.S.A. 50-2024 and amendments thereto.

0150 (q) "Treatment facility" means any mental health center or
0151 clinic, psychiatric unit of a medical care facility, psychologist,
0152 physician or other institution or individual authorized or li-
0153 censed by law to provide either inpatient or outpatient treat-
0154 ment to any patient.

0155 (r) "Voluntary patient" means a person who is receiving
0156 treatment at a treatment facility other than by order of any
0157 court.

licensed or certified by the state to provide such service as an
independent practitioner or under the supervision of such practitioner

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0158 (m) (s) The terms defined in K.S.A. 59-3002 and amend-
0159 ments thereto shall have the meanings provided by that section.

0160 (n) "Peace officer" means any sheriff, regularly employed
0161 deputy sheriff, state highway patrolman, regularly employed city
0162 police officer or a law enforcement officer of any county law
0163 enforcement department.

0164 Sec. 3. K.S.A. 59-2906 is hereby amended to read as follows:
0165 59-2906. The head of the a treatment facility shall discharge any
0166 informal patient or voluntary patient whose treatment therein
0167 such head of the treatment facility determines in the facility is
0168 determined by the head of the treatment facility to be no longer
0169 advisable. The head of the treatment facility shall give written
0170 notice of such the discharge to the patient and, where if appro-
0171 priate, to such the patient's parent, guardian or person in loco
0172 parentis.

Prior to the discharge,

Jean Strickland

0173 Sec. 4. K.S.A. 59-2907 is hereby amended to read as follows:
0174 59-2907. Except as hereinafter provided, The head of the a
0175 treatment facility shall discharge any a voluntary patient who has
0176 requested discharge, in writing, or whose discharge is requested,
0177 in writing, by another person, within a reasonable time but not to
0178 exceed three (3) days, excluding Saturdays, Sundays and legal
0179 holidays, after the receipt of such request. If, however, such
0180 request is made by another person, such discharge shall be
0181 conditioned upon the written consent of the voluntary patient,
0182 except that if the voluntary patient be under eighteen (18) years
0183 of age, such discharge shall be conditioned upon the consent of
0184 such patient's parent, guardian or person in loco parentis unless
0185 such patient such patient's written request for discharge. If the
0186 voluntary patient is a minor, the written request for discharge
0187 shall be made by the minor's parent or person in loco parentis
0188 unless the minor made written application to become a voluntary
0189 patient on his or her own behalf. If, however, such voluntary
0190 patient is over eighteen (18) years of age and has a guardian, such
0191 discharge shall be conditioned only upon the consent of the
0192 guardian. Whenever a minor fourteen (14) years of age or older
0193 the minor's own behalf. If a minor 14 or more years of age has
0194 made written application to become a voluntary patient on his or

0195 her *the* minor's own behalf and has requested to be discharged,
0196 the head of the treatment facility shall promptly inform the
0197 minor's parent or other person *in loco parentis* of the request.

0198 No application to determine whether a person is a mentally ill
0199 person shall be filed with respect to a voluntary patient unless
0200 such patient has requested or consented to his or her discharge
0201 or, if the voluntary patient is under eighteen (18) years of age and
0202 did not apply to become a voluntary patient on his or her own
0203 behalf, the discharge has been requested by the parent, guardian
0204 or person *in loco parentis* to such patient.

0205 Nothing in this act shall prevent the head of the treatment
0206 facility or other person from filing an application for determi-
0207 nation of mental illness with respect to a voluntary patient who
0208 has either: (a) Requested discharge from the treatment facility
0209 or (b) is refusing reasonable treatment efforts and is likely to
0210 cause harm to self or others if discharged.

0211 Sec. 5. K.S.A. 59-2908 is hereby amended to read as follows:
0212 59-2908. (a) Any peace law enforcement officer who has reason-
0213 able belief upon observation, that any person is a mentally ill
0214 person and because of such person's illness is likely to do
0215 physical injury to himself or herself cause harm to self or others
0216 if allowed to remain at liberty may take such the person into
0217 custody without a warrant. Said The officer shall transport such
0218 the person to any treatment facility where such the person shall
0219 be examined by a physician or psychologist on duty at such
0220 facility. If no physician or psychologist is on duty at the time
0221 such the person is transported to the facility, such examination
0222 shall be made the person shall be so examined within a reason-
0223 able time not to exceed seventeen (17) 17 hours. If a written
0224 statement is made by such the physician or psychologist at the
0225 treatment facility that after preliminary examination such the
0226 physician or psychologist believes such the person to be a
0227 mentally ill person and because of such the person's illness is
0228 likely to do physical injury to himself or herself cause harm to
0229 self or others if allowed to remain at liberty, and if such the
0230 treatment facility is willing to admit such person the peace the
0231 person, the law enforcement officer shall present to such the

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0232 treatment facility the application provided for in subsection (b)
0233 of K.S.A. 59-2909 *and amendments thereto*. If the physician or
0234 *psychologist* on duty at the treatment facility does not believe
0235 ~~such~~ *the* person to be a mentally ill person, the ~~peace law~~
0236 *enforcement* officer shall release ~~such~~ *the* person.

0237 (b) If the physician or *psychologist* on duty at the treatment
0238 facility states that ~~said~~ *the* physician or *psychologist* believes
0239 ~~such~~ *the* person to be a mentally ill person but the treatment
0240 facility is unwilling to admit ~~such~~ *the* person, or if there is no
0241 treatment facility available to receive ~~such~~ *the* person within the
0242 territorial limits of the ~~peace law enforcement~~ officer's jurisdic-
0243 tion, the ~~peace law enforcement~~ officer may detain ~~such~~ *the*
0244 person in any other suitable place until the close of the first day
0245 ~~such~~ ~~court~~ *the district court of the county* is open for the
0246 transaction of business, unless the court orders that ~~such~~ *the*
0247 person remain in custody pursuant to the provisions of K.S.A.
0248 59-2912 *and amendments thereto*. If a ~~peace law enforcement~~
0249 officer detains a person pursuant to this subsection, the ~~peace~~
0250 *law enforcement* officer shall file the application provided for in
0251 subsection (a) of K.S.A. 59-2912 *and amendments thereto*, as
0252 soon as the court is open for the transaction of business.

0253 Sec. 6. K.S.A. 59-2909 is hereby amended to read as follows:
0254 59-2909. (a) A treatment facility may admit and detain any person
0255 for emergency observation and treatment upon an order of pro-
0256 tective custody issued by a district court pursuant to K.S.A.
0257 59-2912 *and amendments thereto*.

0258 (b) A treatment facility may admit and detain any person for
0259 emergency observation and treatment upon written application
0260 of any ~~peace law enforcement~~ officer having custody of any
0261 person pursuant to K.S.A. 59-2908 *and amendments thereto*. The
0262 application shall state:

- 0263 (1) The name and address of ~~such~~ *the* person, if known;
0264 (2) the name and address of ~~such~~ *the* person's spouse or
0265 nearest relative, if known;
0266 (3) the officer's belief that ~~such~~ *the* person is a mentally ill
0267 person and because of ~~such~~ *the* person's illness is likely to ~~do~~
0268 ~~physical injury to himself or herself~~ *cause harm to self* or others

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0269 if not immediately detained;

0270 (4) the factual circumstances under which ~~sueh~~ *the* person
0271 was taken into custody; and

0272 (5) the fact that the ~~peæe~~ *law enforcement* officer will sub-
0273 mit the application provided for in subsection (a) of K.S.A.
0274 59-2912 *and amendments thereto*, by ~~five o'clock~~ 5:00 p.m. of the
0275 next full day that the district court is open for the transaction of
0276 business or that the officer has been informed by a parent,
0277 guardian or other person *in loco parentis* to the person taken into
0278 custody that such ~~person~~ *parent, guardian or other person*,
0279 whose name shall be stated in the application, will file the
0280 application provided for in subsection (b) of K.S.A. 59-2912 *and*
0281 *amendments thereto* within ~~sueh~~ *that* time.

0282 (c) A treatment facility may admit and detain any person for
0283 emergency observation and treatment upon the written applica-
0284 tion of any individual. The application shall state:

0285 (1) The name and address of ~~sueh~~ *the* person, if known;

0286 (2) the name and address of ~~sueh~~ *the* person's spouse or
0287 nearest relative, if known;

0288 (3) the applicant's belief that ~~sueh~~ *the* person is a mentally ill
0289 person and because of ~~sueh~~ *the* person's illness is likely to ~~do~~
0290 ~~physical injury to himself or herself~~ *cause harm to self* or others
0291 if not immediately detained;

0292 (4) the circumstances in support of ~~sueh~~ *that* belief; and

0293 (5) the fact that the ~~person~~ *applicant* will submit the appli-
0294 cation provided for in subsection (b) of K.S.A. 59-2912 *and*
0295 *amendments thereto* by ~~five o'clock~~ 5:00 p.m. of the next full day
0296 that the district court is open for transaction of business.

0297 (d) Application of an individual under subsection (c) shall be
0298 accompanied by a statement in writing of a physician *or psy-*
0299 *chologist* confirming the existence of the described condition of
0300 ~~sueh~~ *the* person and, upon the filing of ~~sueh~~ *the* application, the
0301 head of the treatment facility or ~~his~~ *or her* ~~the~~ *designee of the*
0302 *head of the treatment facility* may authorize and order in writing
0303 any ~~peæe~~ *law enforcement* officer or other person to take into
0304 custody and transport ~~sueh~~ *the* person to the treatment facility.

0305 (e) Any treatment facility or personnel thereof, who in good

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0306 faith renders render treatment in accordance with law to any
0307 person admitted pursuant to subsection (b) or (c), shall not be
0308 liable in a civil or criminal action based upon a claim that ~~such~~
0309 the treatment was rendered without legal consent.

0310 Sec. 7. K.S.A. 59-2910 is hereby amended to read as follows:
0311 59-2910. (a) Whenever any person has been taken into custody
0312 pursuant to K.S.A. 59-2908, ~~or pursuant to subsection (d) of~~
0313 K.S.A. 59-2909; ~~or pursuant to K.S.A. 59-2912, such and amend-~~
0314 ~~ments thereto,~~ the person shall be informed immediately by the
0315 ~~person individual taking such the person into custody that he or~~
0316 ~~she the person~~ is entitled to contact immediately ~~such the per-~~
0317 son's legal counsel or next of kin, or both. ~~Such person the person~~
0318 ~~taken into custody~~ shall be allowed to communicate by reason-
0319 able means with a reasonable number of persons and may con-
0320 sult privately with an attorney, a personal physician or psychol-
0321 ogist and at least one (1) member of ~~such the person's family,~~ and
0322 shall be immediately notified of ~~such these~~ rights upon being
0323 taken into custody.

, minister of religion, including Christian Science practitioner
or guardian or other person in loco parentis

0324 (b) Whenever any person has been admitted to a treatment
0325 facility pursuant to K.S.A. 59-2909 ~~and amendments thereto,~~ the
0326 head of the treatment facility or his ~~or her the~~ designee of the
0327 head of the treatment facility shall immediately notify ~~such the~~
0328 person's legal counsel or legal guardian, spouse; or any next of
0329 kin, if known, unless ~~such application was made by such the~~
0330 ~~applicant was the person's legal counsel or legal guardian,~~
0331 spouse; or next of kin. ~~Such The~~ person shall be given a copy of
0332 the application of the ~~peace law enforcement officer or individ-~~
0333 ual, or a copy of the order of protective custody; ~~and. The person~~
0334 shall be allowed to communicate by all reasonable means with a
0335 reasonable number of persons at reasonable hours of the day and
0336 night and may consult privately with an attorney, a personal
0337 physician or psychologist and at least one (1) member of ~~such the~~
0338 person's family, and shall be immediately notified of ~~such these~~
0339 rights upon admission.

, minister of religion, including Christian Science practitioner
or guardian or other person in loco parentis

0340 (c) Whenever any person has been taken into custody pursu-
0341 ant to K.S.A. 59-2908, ~~or pursuant to subsection (d) of K.S.A.~~
0342 59-2909; or pursuant to K.S.A. 59-2912, ~~and amendments thereto,~~

0343 a ~~physieian~~ *treatment facility* may not administer to ~~sueh~~ *the*
0344 person any medication or therapy which will alter ~~sueh~~ *the*
0345 person's mental state in such a way *as* to adversely affect ~~sueh~~
0346 *the* person's judgment, unless such medication or therapy is
0347 necessary to sustain life or protect the ~~patient~~ *person* or others. A
0348 report of all treatment provided along with any written consent
0349 shall be filed with the court.

0350 Sec. 8. K.S.A. 59-2911 is hereby amended to read as follows:
0351 59-2911. The head of the treatment facility ~~or his or her~~ *designee*
0352 shall discharge any person admitted pursuant to subsection (a) of
0353 K.S.A. 59-2909 *and amendments thereto* when the order of
0354 protective custody expires and shall discharge any person ad-
0355 mitted pursuant to subsection (b) or (c) of K.S.A. 59-2909 *and*
0356 *amendments thereto* not later than ~~five o'clock~~ *5:00* p.m. of the
0357 next full day that the district court of the county ~~of the presenee~~
0358 ~~of sueh person where the person is present~~ is open for the
0359 transaction of business after the admission date of ~~sueh~~ *the*
0360 person; ~~but in no case later than forty-eight (48) hours following~~
0361 ~~sueh admission date, excluding Sundays and legal holidays,~~
0362 unless the district court orders that such person remain in cus-
0363 tody pursuant to the provisions of K.S.A. 59-2912 *and amend-*
0364 *ments thereto.*

0365 Sec. 9. K.S.A. 59-2912 is hereby amended to read as follows:
0366 59-2912. (a) A district court may issue an order of protective
0367 custody upon the verified application of any ~~peace officer~~ *law*
0368 *enforcement officer or other individual.* The application shall
0369 state:

0370 (1) The name and address of the person *with respect to*
0371 *whom the order is sought*, if known;

0372 (2) the name and address of ~~sueh~~ *the* person's spouse, legal
0373 counsel or nearest relative, if known;

0374 (3) the affiant's belief that the person is a mentally ill person
0375 and because of ~~sueh~~ *the* person's illness is likely to ~~do~~ *physical*
0376 *injury to himself or herself cause harm to self* or others if not
0377 immediately detained;

0378 (4) the ~~circumstances under which the person was taken into~~
0379 *eustody factual allegations upon which subsection (a)(3) is*

0380 based; and

0381 (5) that the application provided for in K.S.A. 59-2913 and
0382 amendments thereto has been filed.

0383 This order An order issued under this subsection shall only be
0384 valid until five o'clock p.m. of the second 5:00 p.m. of the second
0385 full day the district court is open for the transaction of business
0386 after the date of issuance; but in no case more than seventy-two
0387 (72) hours following the issuance of such order, excluding Sun-
0388 days and legal holidays. The district court shall not issue suc-
0389 cessive orders of protective custody pursuant to this subsection.

0390 (b) A district court may issue an order of protective custody
0391 upon the verified application of any person, if the application
0392 provided for in K.S.A. 59-2913 has been filed in the court. The
0393 application shall state:

0394 (1) The application provided for in K.S.A. 59-2913 has been
0395 filed;

0396 (2) the affiant's belief that the proposed patient is a mentally
0397 ill person;

0398 (3) because of the proposed patient's illness, said patient is
0399 likely to do physical injury to himself or herself or others if not
0400 immediately detained.

0401 This order shall only be valid until the conclusion of the
0402 hearing held pursuant to K.S.A. 59-2917.

0403 (e) (b) A district court may issue an order of protective cus-
0404 tody at any time after the hearing provided for in K.S.A. 59-2917
0405 when the court has found at such hearing that the proposed
0406 patient is a mentally ill person. This order shall be valid until the
0407 order for treatment is executed.

0408 (d) upon the verified application of any person, if the appli-
0409 cation provided for in K.S.A. 59-2913 and amendments thereto
0410 has been filed in the court, and the court has found following a
0411 hearing that there is probable cause to believe that the person
0412 with respect to whom the application has been filed is a men-
0413 tally ill person. No order of protective custody shall be issued
0414 pursuant to this subsection (a) or (b) of this section until the court
0415 has held a hearing to determine whether there is probable cause
0416 to believe the allegations made pursuant to subsection (a) or (b)

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0417 of this section. Such hearing shall be held within forty-eight (48)
0418 hours of the filing of such application, excluding Saturdays,
0419 Sundays and legal holidays *probable cause, which hearing shall*
0420 *be held not later than 5:00 p.m. of the second full day the*
0421 *district court is open for the transaction of business after the*
0422 *filing of the application provided for by K.S.A. 59-2913 and*
0423 *amendments thereto. The person against with respect to whom*
0424 *the application has been filed shall be present at such the*
0425 *hearing, unless the attorney for such person shall request that*
0426 *such the person requests that the person's presence be waived*
0427 *and the court finds that the person's presence at the hearing*
0428 *would be injurious to his or her the person's welfare. The court*
0429 *shall enter in the record of the proceedings the facts upon which*
0430 *the court has found that the presence of the person at the hearing*
0431 *would be injurious to such person's welfare. Notwithstanding*
0432 *the foregoing provisions of this subsection, if the person against*
0433 *with respect to whom the application has been filed requests in*
0434 *writing to the court or to such person's attorney that he or she the*
0435 *person be present at the hearing, then such the person's pres-*
0436 *ence cannot be waived.*

0437 (e) If the person against whom the application has been filed
0438 is in custody pursuant to the provisions of K.S.A. 50-2008 or
0439 50-2009 at the time such application is filed, the court may order
0440 that such person remain in custody at a treatment facility or other
0441 suitable place until the conclusion of the hearing held pursuant
0442 to the provisions of this section. If the person against whom the
0443 application has been filed is not in custody at the time such
0444 application is filed, the court may order that such person be
0445 taken into custody and placed in a treatment facility or other
0446 suitable place willing to receive such person until the conclusion
0447 of the hearing held pursuant to the provisions of this section.

0448 (f) (c) The applicant and the person against with respect to
0449 whom the application has been filed shall be notified of the time
0450 and place of the hearing and afforded an opportunity to appear at
0451 the hearing, to testify and to present and cross-examine wit-
0452 nesses. If the person against with respect to whom the applica-
0453 tion has been filed has not retained an attorney, the court shall

0454 appoint an attorney for ~~such~~ the person in the same manner as an
0455 attorney is appointed under the provisions of subsection (e) of
0456 K.S.A. 59-2914 and amendments thereto. All persons not neces-
0457 sary for the conduct of the proceedings may be excluded. The
0458 hearing shall be conducted in as informal a manner as may be
0459 consistent with orderly procedure and in a physical setting not
0460 likely to have a harmful effect on the person ~~against with respect~~
0461 to whom the application has been filed. The court shall receive
0462 all relevant and material evidence which may be offered. The
0463 rules governing evidentiary and procedural matters at hearings
0464 under this section shall be applied so as to facilitate informal,
0465 efficient presentation of all relevant, probative evidence and
0466 resolution of issues with due regard to the interests of all
0467 parties. ~~Hearsay evidence may be received, and experts and~~
0468 ~~other witnesses may testify to any relevant and probative facts~~
0469 ~~at the discretion of the court.~~ If the applicant is not represented
0470 by counsel, the county or district attorney shall represent the
0471 applicant, prepare all necessary papers, appear at the hearing
0472 and present such evidence as he or she shall determine the
0473 county or district attorney determines to be of aid to the court in
0474 determining whether or not there is probable cause to believe
0475 that the person ~~against with respect to~~ whom the application has
0476 been filed is a mentally ill person and is likely to do physical
0477 injury to himself or herself or others if not immediately detained.
0478 If the court determines from the evidence that there is proba-
0479 ble cause to believe that the person ~~against with respect to~~
0480 whom the application has been filed is a mentally ill person and
0481 is likely to do physical injury to himself or herself or others ~~if not~~
0482 immediately detained, the court shall issue an order of protective
0483 custody; otherwise, the court shall terminate the proceedings.
0484 (g) (d) The order of protective custody issued pursuant to
0485 provisions of this section may authorize a health officer, physi-
0486 cian, peace law enforcement officer or other person to take the
0487 person ~~against with respect to~~ whom the application has been
0488 filed into custody and to transport and place ~~such the~~ person in a
0489 designated treatment facility or other suitable place willing to
0490 receive ~~such the~~ person and may designate the place of deten-

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The facts or data upon which a duly qualified expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in a particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The expert may testify in terms of opinion or inference and give the expert's reasons therefor without prior disclosure of the underlying facts or data unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross examination.

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0491 tion, but no person shall be detained in protective custody in a
0492 nonmedical facility used for the detention of persons charged
0493 with or convicted of a crime unless other facilities are not
0494 available. In lieu of such detention, the order of protective
0495 custody may allow the person ~~against~~ *with respect to* whom the
0496 application has been filed to be at liberty, subject to such
0497 conditions as the court may impose, pending the hearing pro-
0498 vided for in K.S.A. 59-2917 ~~or pending the execution of the order~~
0499 ~~for treatment and amendments thereto.~~

0500 Sec. 10. K.S.A. 59-2914 is hereby amended to read as fol-
0501 lows: 59-2914. (a) Upon the filing of the application provided for
0502 in K.S.A. 59-2913 ~~and amendments thereto~~, the district court
0503 shall issue the following:

0504 ~~(a)~~ (1) An order fixing the time and place of the hearing on
0505 the application. Such hearing, in the court's discretion, may be
0506 conducted in the courtroom, a treatment facility or other suitable
0507 place. The time designated in the order shall in no event be
0508 earlier than seven ~~(7)~~ days or later than ~~fourteen (14)~~ 14 days after
0509 the date of the filing of the application, ~~unless advanced pursu-~~
0510 ~~ant to subsection (d) of K.S.A. 59-2915, except that in any case~~
0511 ~~where the proposed patient absents himself or herself except~~
0512 ~~that if the proposed patient absents the patient's self and the~~
0513 service of the notice on ~~said~~ the proposed patient cannot be
0514 served because of ~~said~~ the absence ~~then~~, the time of absence
0515 shall not be included in computing the time of the expiration of
0516 the ~~fourteen (14) day~~ *fourteen-day* limitation above set out.

0517 ~~(b)~~ (2) An order that the proposed patient appear at the time
0518 and place of the hearing. The proposed patient shall be present
0519 at the hearing, unless the attorney for ~~such person shall request~~
0520 ~~that such person's~~ *the proposed patient requests that the pro-*
0521 *posed patient's* presence be waived and the court finds that the
0522 ~~person's proposed patient's~~ presence at the hearing would be
0523 injurious to ~~his or her~~ *the proposed patient's* welfare. The court
0524 shall enter in the record of the proceedings the facts upon which
0525 the court has found that the presence of the ~~person proposed~~
0526 *patient* at the hearing would be injurious to ~~such person's~~ *the*
0527 *proposed patient's* welfare. Notwithstanding the foregoing pro-

0528 visions of this subsection, if the person against whom the appli-
0529 cation has been filed *proposed patient* requests in writing to the
0530 court or to such person's attorney that he or she *the proposed*
0531 *patient* be present at the hearing, then such person's *the pro-*
0532 *posed patient's* presence cannot be waived.

0533 (e) (3) An order appointing an attorney to represent the pro-
0534 posed patient at all stages of the proceedings and until all orders
0535 resulting from such proceedings are terminated. The court shall
0536 give preference, in the appointment of the attorney, to any
0537 attorney who has represented the proposed patient in other
0538 matters if the court has knowledge of the prior relationship. The
0539 proposed patient shall have the right to engage an attorney of
0540 ~~said the proposed~~ patient's own choice and, in such event, the
0541 attorney appointed herein shall be relieved of all duties by the
0542 court.

0543 (d) (4) An order that the proposed patient shall appear at a
0544 time and place that is in the best ~~interest~~ *interests* of the patient
0545 to consult with ~~said the proposed~~ patient's court-appointed at-
0546 torney, which time shall be *at least five days* prior to the
0547 ~~execution of the order for mental evaluation the date set for the~~
0548 *hearing under K.S.A. 59-2917 and amendments thereto.*

0549 (e) (5) A notice in the manner provided for in K.S.A. 59-2916
0550 *and amendments thereto.*

0551 (6) *An order of investigation, which investigation may in-*
0552 *quire into the proposed patient's character, family relationships*
0553 *and past conduct; whether or not the proposed patient is likely*
0554 *to cause harm to self or others if allowed to remain at liberty;*
0555 *and other pertinent factors. The court may designate a treat-*
0556 *ment facility, licensed social worker, court services officer or*
0557 *social service agency to make such investigation and to*
0558 *promptly make a written report to the court, which report shall*
0559 *be made available only to counsel for the parties at least five*
0560 *days prior to the date set for the hearing under K.S.A. 59-2917*
0561 *and amendments thereto.*

0562 (7) *Upon the motion of any party, containing those state-*
0563 *ments required by K.S.A. 59-3009 and amendments thereto,*
0564 *orders necessary to make a determination of the need for a*

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0565 guardian or conservator, or both, to act on behalf of the proposed
0566 patient. For the purposes of determining whether a guardian or
0567 conservator is needed, the hearings required by K.S.A. 59-2917
0568 and 59-3013, and amendments thereto, may be consolidated.

0569 (b) Nothing in this section shall prevent the court from
0570 granting an order of continuance, for good cause shown, to
0571 either party for no longer than seven days, except that such
0572 limitation does not apply to a request for an order of continu-
0573 ance made by the proposed patient. The court also, upon request
0574 by either party, may advance the date of the hearing if necessary
0575 in the interests of all concerned.

0576 Sec. 11. K.S.A. 59-2914a is hereby amended to read as fol-
0577 lows: 59-2914a. (a) After the filing of the application provided for
0578 in K.S.A. 59-2913 and amendments thereto and prior to the
0579 hearing provided for in K.S.A. 59-2917 and amendments thereto,
0580 the court shall issue an order for mental evaluation. The order of
0581 mental evaluation shall be served in the manner provided for in
0582 K.S.A. 59-2916 and amendments thereto. It shall order the pro-
0583 posed patient to submit himself or herself for to a mental evalu-
0584 ation and to undergo such evaluation as may be designated by
0585 the court in the order, except that any proposed patient who is
0586 not under an order of protective custody issued pursuant to
0587 K.S.A. 59-2912 and who requests a hearing pursuant to subsec-
0588 tion (b), need not submit to such evaluation until said hearing
0589 has been held and the court finds that there is probable cause to
0590 believe that the proposed patient is a mentally ill person ~~by a~~
0591 ~~physician or psychologist at a public or private treatment facility~~
0592 ~~it~~. The evaluation may be held at a treatment facility, the home
0593 of the proposed patient or such other suitable place as that the
0594 court shall determine ~~determines~~ is not likely to have a harmful
0595 effect on the health of the proposed patient. A state psychiatric
0596 hospital shall receive and evaluate any proposed patient ordered
0597 evaluated therein.

0598 (b) Whenever a proposed patient requests a hearing pursuant
0599 to subsection (a), the hearing shall be held within a reasonable
0600 time thereafter. The applicant and the proposed patient shall be
0601 notified of the time and place of the hearing, afforded an oppor-

Sec. 11. K.S.A. 59-2914a is hereby amended to read as follows: 59-2914a. (a) After the filing of the application provided for in K.S.A. 59-2913 and amendments thereto and prior to the hearing provided for in K.S.A. 59-2917 and amendments thereto, the court shall issue an order for mental evaluation. The order of mental evaluation shall be served in the manner provided for in K.S.A. 59-2916 and amendments thereto. It shall order the proposed patient to submit himself-or-herself-for to a mental evaluation and to undergo such evaluation as may be designated by the court in the order, except that any proposed patient who is not under an order of protective custody issued pursuant to K.S.A. 59-2912 and amendments thereto and who requests a hearing pursuant to subsection (b), need not submit to such evaluation until said the hearing has been held and the court finds that there is probable cause to believe that the proposed patient is a mentally ill person. The evaluation may be held at a treatment facility, the home of the proposed patient or such other suitable place as that the court shall--determine ~~determines~~ is not likely to have a harmful effect on the health of the proposed patient. A state psychiatric hospital shall receive and evaluate any proposed patient ordered evaluated therein.

(b) Whenever a proposed patient requests a hearing pursuant to subsection (a), the hearing shall be held within a reasonable time thereafter. The applicant and the proposed patient shall be notified of the time and place of the hearing, afforded an opportunity to testify, and to

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0602 tunity to testify, and to present and cross-examine witnesses. The
 0603 proposed patient shall be present at the hearing, and said pa-
 0604 tient's presence cannot be waived. All persons not necessary for
 0605 the conduct of the proceedings may be excluded. The hearing
 0606 shall be conducted in as informal a manner as may be consistent
 0607 with orderly procedure and in a physical setting not likely to
 0608 have a harmful effect on the proposed patient. The court shall
 0609 receive all relevant and material evidence which may be offered.
 0610 If the applicant is not represented by counsel, the county or
 0611 district attorney shall represent the applicant, prepare all neces-
 0612 sary papers, appear at the hearing and present such evidence as
 0613 he or she shall determine to be of aid to the court in determining
 0614 whether or not there is probable cause to believe that the
 0615 proposed patient is a mentally ill person. If the court determines
 0616 from the evidence that there is probable cause to believe that the
 0617 proposed patient is a mentally ill person, the court shall issue the
 0618 order of mental evaluation; otherwise, the court shall terminate
 0619 all proceedings. At the time designated by the court in the order,
 0620 but in no event later than three (3) days prior to the date of the
 0621 hearing provided for in K.S.A. 59-2917, the examiner shall sub-
 0622 mit to the court a report, in writing, of the evaluation which
 0623 report also shall be made available to counsel for the parties at
 0624 least three (3) days prior to such hearing. The report also shall be
 0625 made available to the proposed patient and to whomever said
 0626 patient directs, unless for good cause recited in the order, the
 0627 court orders otherwise. Such report shall state that the examiner
 0628 has made an examination of the proposed patient and shall state
 0629 the results of the examination on the issue of whether the
 0630 proposed patient is a mentally ill person. At the time designated
 0631 by the court in the order, but in no event later than five days
 0632 prior to the date of the hearing provided for in K.S.A. 59-2917
 0633 and amendments thereto, the examiner shall submit to the court
 0634 a written report of the evaluation, which report shall also be
 0635 made available to counsel for the parties at least three days
 0636 prior to such hearing. Such report shall state that the examiner
 0637 has made an examination of the proposed patient and shall state
 0638 the results of the examination on the issue of whether the

present and cross-examine witnesses. The proposed patient shall be present at the hearing, and said the patient's presence cannot be waived. All persons not necessary for the conduct of the proceedings may be excluded. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the proposed patient. The court shall receive all relevant and material evidence which may be offered. If the applicant is not represented by counsel, the county or district attorney shall represent the applicant, prepare all necessary papers, appear at the hearing and present such evidence as ~~he--or--she~~ shall determine is determined to be of aid to the court in determining whether or not there is probable cause to believe that the proposed patient is a mentally ill person. If the court determines from the evidence that there is probable cause to believe that the proposed patient is a mentally ill person, the court shall issue the order of mental evaluation; otherwise, the court shall terminate all proceedings. At the time designated by the court in the order, but in no event later than three (3) days prior to the date of the hearing provided for in K.S.A. 59-2917 and amendments thereto, the examiner shall submit to the court a report, in writing, of the evaluation which report also shall be made available to counsel for the parties at least three (3) days prior to such hearing. The report also shall be made available to the proposed patient and to whomever said the patient directs, unless for good cause recited in the order, the court orders otherwise. Such report shall state that the examiner has made an examination of the proposed patient and shall state the results of the examination on the issue of whether the proposed patient is a mentally ill person and the examiner's opinion as to the least restrictive treatment alternative which will protect the proposed patient and others and allow for the improvement of the proposed patient.

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0639 ~~proposed patient is a mentally ill person.~~

0640 Sec. 12. K.S.A. 59-2916 is hereby amended to read as fol-
0641 lows: 59-2916. (a) The notice required by subsection (e) of K.S.A.
0642 59-2914 and amendments thereto shall be given to the proposed
0643 patient named in the application, the attorney appointed pursu-
0644 ant to subsection (e) of K.S.A. 59-2914, and amendments thereto
0645 and to such other persons as the court shall direct. ~~(a) directs.~~

0646 (b) The notice shall state:

0647 (1) That an application has been filed, alleging that the pro-
0648 posed patient is a mentally ill person and requesting that the
0649 court order treatment;

0650 (2) the time and place of the hearing;

0651 (3) the name of the attorney appointed to represent the pro-
0652 posed patient and the time and place where the proposed patient
0653 shall consult with such attorney; and

0654 (4) that the proposed patient has a right to demand a hearing
0655 before a jury.

0656 (b) (c) The court may order any of the following to serve the
0657 notice:

0658 (1) The physician currently administering to the proposed
0659 patient, if the physician consents;

0660 (2) the head of the local mental health clinic or his or her
0661 designee;

0662 (3) the local health officer or such officer's designee;

0663 (4) the secretary of social and rehabilitation services or said
0664 secretary's designee;

0665 (5) any peace officer;

0666 (6) the attorney of the proposed patient may order any of the
0667 following to serve the notice:

0668 (1) The physician or psychologist currently administering to
0669 the proposed patient, if the physician or psychologist consents;

0670 (2) the head of the local mental health clinic or the designee
0671 thereof;

0672 (3) the local health officer or such officer's designee;

0673 (4) the secretary of social and rehabilitation services or the
0674 secretary's designee;

0675 (5) any law enforcement officer; or

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0012 (6) *the attorney of the proposed patient.*

0013 The notice shall be served personally on the proposed patient
0014 and the attorney appointed pursuant to ~~subsection (e)~~ of K.S.A.
0015 59-2914 and amendments thereto as soon as possible, but not
0016 less than five ~~(5)~~ 10 days prior to the date of the hearing, and
0017 immediate return thereof shall be made. ~~Unless otherwise or-~~
0018 ~~dered by the court, notice shall be served on the proposed~~
0019 ~~patient by a nonuniformed person. Unless otherwise ordered by~~
0020 ~~the court, notice shall be served on the proposed patient by a~~
0021 ~~nonuniformed person.~~ Notice to all other persons shall be in
0022 such manner and within such time as the court shall direct be
0023 made in the manner directed by the court, but such notice shall
0024 not be given less than five ~~(5)~~ 10 days prior to the date of the
0025 hearing.

0026 Sec. 13. K.S.A. 59-2916a is hereby amended to read as fol-
0027 lows: 59-2916a. Within ~~forty-eight (48)~~ 48 hours immediately
0028 prior to and during the *any* hearing provided for in ~~K.S.A.~~
0029 ~~59-2917~~ by this act, a *physician treatment facility* may not
0030 administer to a proposed patient any medication or therapy
0031 which will alter ~~such~~ the proposed patient's mental state in such
0032 a way as to adversely affect ~~such~~ the proposed patient's judgment
0033 or hamper ~~such~~ the proposed patient in preparing for or partici-
0034 pating in the hearing, unless such medication or therapy is
0035 necessary to sustain life or protect the *proposed* patient or others.
0036 ~~When any medication or therapy has been administered to a~~
0037 ~~proposed patient during the forty-eight (48) hours immediately~~
0038 ~~prior to or during the hearing, the physician attending the pro-~~
0039 ~~posed patient shall cause a record of all such medication or~~
0040 ~~therapy to be presented to the court Counsel for the proposed~~
0041 ~~patient may examine any physician who has administered med-~~
0042 ~~ication to the proposed patient within 48 hours prior to any~~
0043 ~~hearing provided for by this act. If in any case the court~~
0044 ~~determines that medication has been administered which ad-~~
0045 ~~versely affects the proposed patient's judgment or hampers the~~
0046 ~~proposed patient in preparing for or participating in the hear-~~
0047 ~~ing, the court shall order that no further medication which~~
0048 ~~alters the proposed patient's mental state be administered until~~

0049 conclusion of any hearing provided for by this act, and the court
0050 shall grant to the proposed patient a reasonable continuance.

0051 Sec. 14. K.S.A. 59-2917 is hereby amended to read as fol-
0052 lows: 59-2917. The hearing shall be held at the time and place
0053 specified in the court's order unless a continuance as provided in
0054 K.S.A. ~~59-2915~~ 59-2914, 59-2916a or 59-2918, and amendments
0055 thereto, has been granted. The hearing shall be held to the court
0056 only, unless the proposed patient shall, at least 48 hours four
0057 days prior to the time of the hearing, demand in writing a hearing
0058 before a jury.

0059 The jury, if one is demanded, shall consist of six persons. The
0060 jury panel shall be selected as provided by law and from such
0061 panel 12 qualified jurors, who have been passed for cause, shall
0062 be empaneled. Prior service as a juror in any court shall not, for
0063 that reason, exempt any person from jury service hereunder.
0064 From the panel so obtained, the proposed patient or ~~such the~~
0065 proposed patient's attorney shall strike one name; the applicant,
0066 or ~~such the~~ applicant's attorney, one; and so on alternately until
0067 each shall have stricken three names. If either party neglects or
0068 refuses to aid in striking the names, the court shall strike ~~the a~~
0069 name on behalf of such party. ~~In the event that~~ If 12 qualified
0070 jurors cannot be so empaneled, the court shall draw from such
0071 panel or list, by lot, sufficient additional names to empanel 12
0072 qualified jurors.

0073 The applicant and the proposed patient shall be afforded an
0074 opportunity to appear at the hearing, to testify, and to present
0075 and cross-examine witnesses. All persons not necessary for the
0076 conduct of the proceedings may be excluded. The hearings shall
0077 be conducted in as informal a manner as may be consistent with
0078 orderly procedure and in a physical setting not likely to have a
0079 harmful effect on the proposed patient. The court shall receive
0080 all relevant and material evidence which may be offered, in-
0081 cluding the testimony or written findings and recommendations
0082 of the treatment facility or examiner who has examined or eval-
0083 uated the proposed patient and the testimony ~~and or written~~
0084 findings and recommendations of the ~~investigators~~ investigator
0085 appointed pursuant to ~~subsection (b) of K.S.A. 59-2915~~ K.S.A.

unless the court finds that the medication is necessary to sustain
the patient's life

psychologists

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0086 59-2914 and amendments thereto. Such evidence shall not be
0087 privileged for the purpose of this hearing.

0088 *The rules governing evidentiary and procedural matters at*
0089 *hearings under this section shall be applied so as to facilitate*
0090 *informal, efficient presentation of all relevant, probative evi-*
0091 *dence and resolution of issues with due regard to the interests of*
0092 *all parties.*

0093 If the applicant is not represented by counsel, the county or
0094 district attorney shall represent the applicant, prepare all neces-
0095 sary papers, appear at the hearing and present such evidence as
0096 the county or district attorney shall determine to be of aid to the
0097 court in determining whether the proposed patient is a mentally
0098 ill person.

0099 Upon the completion of the hearing, if the court or jury finds
0100 by clear and convincing evidence that the proposed patient is a
0101 mentally ill person, ~~and after a careful consideration of reason-~~
0102 ~~able alternatives to inpatient treatment,~~ the court shall order
0103 treatment for such person at ~~any a~~ treatment facility. An order for
0104 treatment in ~~any a~~ treatment facility, except a state psychiatric
0105 hospital, shall be conditioned upon the consent of such facility.

0106 When the court orders treatment, it shall retain jurisdiction to
0107 modify, change or terminate such order.

0108 If, upon the completion of the hearing the court or jury finds
0109 ~~that by~~ clear and convincing evidence that the proposed patient
0110 is a mentally ill person has not been shown, the court shall enter
0111 the finding in the record and by an appropriate order shall
0112 terminate the proceedings.

0113 Sec. 15. K.S.A. 59-2918 is hereby amended to read as fol-
0114 lows: 59-2918. The proposed patient ~~may~~, at any time prior to the
0115 hearing provided for in K.S.A. 59-2917; *and amendments*
0116 *thereto, may* request, in writing, that ~~said the~~ hearing be contin-
0117 ued for ~~ninety (90)~~ 90 days so that the court may make an order of
0118 referral for short-term treatment. Upon receipt of such *a* request,
0119 the court may refer the proposed patient for a period of time not
0120 to exceed ~~ninety (90)~~ 90 days, for short-term treatment, to any
0121 treatment facility. An order of referral for treatment in any
0122 treatment facility, except a state psychiatric hospital, shall be

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0123 conditioned upon the consent of such facility. The court may not
0124 issue an order of referral unless the attorney representing the
0125 proposed patient has filed a statement, in writing, stating that
0126 ~~said~~ *the* attorney has explained to the proposed patient the
0127 nature of the order of referral and the right to a hearing before a
0128 court or jury to determine whether the proposed patient is a
0129 mentally ill person.

0130 Any proposed patient who has been referred for short-term
0131 treatment under this section may be accepted for voluntary
0132 admission in a treatment facility pursuant to K.S.A. 59-2905 *and*
0133 *amendments thereto*. When the proposed patient has been ad-
0134 mitted as a voluntary patient, the treatment facility shall file
0135 written notice of the patient's acceptance as a voluntary patient
0136 in the court which had ordered the referral. The filing of such
0137 notice shall constitute a dismissal of the pending application to
0138 determine whether the proposed patient is a mentally ill person.

0139 Unless the proposed patient has been accepted as a voluntary
0140 patient by a treatment facility, the facility treating the proposed
0141 patient shall, not later than ~~ten (10)~~ 14 days prior to the expiration
0142 date of the referral period, *shall* file a written report of its
0143 findings and recommendations with the court. The court shall
0144 then set the date for the hearing provided for in K.S.A. 59-2917
0145 *and amendments thereto*. Such hearing date shall not be later
0146 than the expiration date of the referral ~~period~~, unless continued
0147 at the *proposed* patient's request.

0148 Sec. 16. K.S.A. 59-2919 is hereby amended to read as fol-
0149 lows: 59-2919. All orders of referral to or treatment in a state
0150 psychiatric hospital shall be made on the form prescribed by the
0151 secretary of social and rehabilitation services. Admission shall be
0152 to the state psychiatric hospital previously designated by the
0153 secretary of social and rehabilitation services to accept persons
0154 from the area of the court's jurisdiction; and, *if requested by the*
0155 *head of the treatment facility*, at a time specified by the head of
0156 the ~~hospital~~ *treatment facility*, which *time* shall be not more
0157 than ~~fifteen (15)~~ 15 days after the date of the order. Notice of the
0158 order shall be given immediately to the designated psychiatric
0159 hospital.

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0160 New Sec. 17. (a) Following the hearing on the petition as
0161 provided for in K.S.A. 59-2917 and amendments thereto, or prior
0162 to the entry of an order provided for in K.S.A. 59-2918 and
0163 amendments thereto, if the court finds that the proposed patient
0164 is a mentally ill person, the court, as an alternative to inpatient
0165 treatment, may enter an order for outpatient treatment at a
0166 community mental health center or other private treatment fa-
0167 cility capable of providing outpatient care. Such an order for
0168 outpatient treatment may be entered by the court only if the
0169 court finds that outpatient treatment will not constitute a danger
0170 to the community and that the patient is not likely to cause harm
0171 to self or others while under outpatient treatment. In considering
0172 this issue the court shall take into consideration all relevant
0173 factors, including but not limited to the degree of supervision
0174 and type of outpatient treatment proposed and available and the
0175 degree of security to the community provided for under outpa-
0176 tient treatment.

0177 (b) No order for outpatient treatment shall be entered unless
0178 the outpatient treatment facility has previously evaluated the
0179 proposed patient, submitted a report recommending outpatient
0180 treatment and consented to treat the patient on an outpatient
0181 basis under the terms and conditions set forth by the court.

0182 (c) If outpatient treatment is ordered, the order shall state the
0183 specific conditions to be followed by the patient and shall
0184 include the general condition that the patient shall follow all
0185 directives and treatment methods established by the head of the
0186 treatment facility or the head's designee. The court shall also
0187 make such orders as are appropriate to provide for transportation
0188 to the outpatient treatment facility and provisions for monitoring
0189 the proposed patient's progress and compliance with outpatient
0190 treatment.

0191 (d) The court shall retain jurisdiction to modify or revoke its
0192 order for outpatient treatment at any time on its own motion, on
0193 the motion of any counsel of record or upon notice from the
0194 treatment facility of any need for new conditions in the order for
0195 outpatient treatment or of material noncompliance by the patient
0196 with the order for outpatient treatment. Revocation or modifica-

_____ , the preferences of the patient

_____ , for the transfer of the copies of the patient's records
to the outpatient facility

psychiatrist

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0197 tion may be ordered by *ex parte* order or by order of the court
0198 after notice and hearing.

0199 The treatment facility shall immediately report to the court any
0200 material noncompliance by the patient with the outpatient treat-
0201 ment order. Such notice may be verbal or by telephone but shall
0202 be followed by a verified written notice to the court and to
0203 counsel for all parties. Upon receipt of telephone, verbal or
0204 written verified notice of noncompliance, the court may enter an
0205 *ex parte* order of protective custody revoking the outpatient
0206 treatment order and providing for immediate commitment to an
0207 inpatient treatment facility.

0208 After the entry of an *ex parte* order revoking or modifying the
0209 order for outpatient treatment, a copy of the order shall be served
0210 upon the patient and the patient's attorney. Any party to the
0211 matter, including the petitioner, the state or the patient may
0212 request a hearing on the matter if the request is filed within five
0213 days from the date of service of the *ex parte* order upon the
0214 patient. The court may also order such a hearing on its own
0215 motion within five days from the date of service of the notice. If
0216 no request or order for hearing is filed within the five-day period,
0217 the *ex parte* order shall become the final order of the court. If a
0218 hearing is requested, a written motion for revocation or modifi-
0219 cation of the outpatient treatment order shall be filed by the state
0220 or the petitioner and a hearing shall be held thereon within five
0221 days after the filing of the motion. If upon hearing the court finds
0222 that the conditions of the outpatient treatment order have not
0223 been met, the court may enter an order for inpatient treatment or
0224 may continue the order for outpatient treatment with different
0225 terms and conditions.

0226 (e) The outpatient treatment facility shall comply with the
0227 provisions of section 19 concerning filing of medical records
0228 summaries each 90 or 180 days during the time the outpatient
0229 treatment order is in effect and the court shall receive and
0230 process such reports in the same manner as reports received from
0231 an inpatient treatment facility.

0232 Sec. 18. K.S.A. 59-2922 is hereby amended to read as fol-
0233 lows: 59-2922. After the application provided for in K.S.A. 59-

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0234 2913 or ~~50-2023~~ and amendments thereto is filed, the district
0235 court at any time, on its own motion or upon the written request
0236 of any person, may transfer the venue of any case to any of the
0237 following district courts under the following conditions:

0238 (a) When the application is filed in the county of the resi-
0239 dence of the patient to:

0240 (1) The county where the patient is being detained in a
0241 treatment facility under the authority of an order issued pursuant
0242 to K.S.A. ~~50-2012~~, ~~50-2017~~ or ~~50-2018~~; or

0243 (2) any other county designated by the court, if the patient
0244 has made a request for a change of venue and the court finds that
0245 the patient cannot obtain a fair hearing in the county of such
0246 patient's residence.

0247 (b) When the application is filed in the county in the pres-
0248 ence of the patient to:

0249 (1) The county of the residence of the patient;

0250 (2) the county where the patient is being detained in a
0251 treatment facility under the authority of an order issued pursuant
0252 to K.S.A. 1982 Supp. ~~50-2012~~ or ~~50-2017~~ or K.S.A. ~~50-2018~~; or

0253 (3) any other county designated by the court, if the patient
0254 has made a request for a change of venue and the court finds that
0255 the patient cannot obtain a fair hearing in the county of such
0256 patient's presence.

0257 If any patient is in a treatment facility, the district court of the
0258 county in which the treatment facility is located may not transfer
0259 venue under any circumstances unless the patient has requested
0260 such transfer *the county where the patient is being detained in a*
0261 *treatment facility under the authority issued pursuant to K.S.A.*
0262 *59-2912, 59-2917 or 59-2918, and amendments thereto. The*
0263 *district court also may transfer the venue of any case to any*
0264 *other county designated by the court if the patient has made a*
0265 *request for the change of venue and the court finds that the*
0266 *patient cannot obtain a fair hearing in the county where the*
0267 *patient is present.*

0268 When any order changing venue is issued, the district court
0269 issuing such order shall transmit to the district court to which
0270 venue was changed a certified copy of all pleadings and orders in

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0271 the case. The district court issuing such order shall transmit to
0272 the district court of the residence of the proposed patient a
0273 statement of all court costs incurred by the county of the district
0274 court issuing such order and a certified copy of all pleadings and
0275 orders in the case.

0276 Any district court to which venue is transferred shall proceed
0277 in the case as if the application had been originally filed therein
0278 and shall cause notice of the change of venue to be given to the
0279 persons and in the manner provided for in K.S.A. 59-2916 *and*
0280 *amendments thereto*, except that the court need not issue the
0281 order for mental evaluation pursuant to K.S.A. 59-2914a *and*
0282 *amendments thereto* if such order has previously been issued.

0283 Any district court to which venue is transferred shall transmit a
0284 statement of any court costs incurred and a certified copy of all
0285 pleadings and orders in the case to the district court of the county
0286 of the residence of the patient.

0287 New Sec. 19. (a) When treatment has been ordered for a
0288 person pursuant to K.S.A. 59-2917 and amendments thereto, the
0289 patient shall be entitled to request a hearing each 90 days during
0290 the first six months of treatment and every 180 days thereafter to
0291 determine whether or not such patient continues by clear and
0292 convincing evidence to be a mentally ill person. The district
0293 court having jurisdiction to modify, change or terminate the
0294 order of treatment shall conduct the hearings. At least two weeks
0295 prior to the end of each period of treatment, the head of the
0296 treatment facility furnishing treatment to the patient shall pro-
0297 vide to the court a summary of the medical records of the patient.
0298 Upon the receipt of the summary, the court shall notify the
0299 patient's attorney of record that the summary has been received.
0300 If there is no attorney of record for the patient, the court shall
0301 appoint an attorney and notify such attorney that the summary
0302 has been received.

0303 (b) When the attorney for the patient has received notice that
0304 the treatment facility has provided the district court with a
0305 summary of the medical records of a patient, the attorney shall
0306 consult with the patient to determine whether the patient desires
0307 a hearing. If the patient desires a hearing, the attorney shall file a

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0308 written request for a hearing with the district court, which
0309 request shall be filed not later than the end of the ninety-day or
0310 one-hundred-eighty-day period of treatment. Upon receiving a
0311 written request for a hearing, the district court shall set the
0312 matter for hearing and give notice of such hearing in the manner
0313 provided for notice under K.S.A. 59-2916 and amendments
0314 thereto. The hearing shall be held as soon as reasonably practi-
0315 cal, but in no event more than 10 days following the filing of the
0316 written request for a hearing. The district court shall give notice
0317 of the time and place of the hearing to the treatment facility to
0318 which the patient was ordered for treatment. The district court
0319 shall proceed with the hearing in the same manner and with the
0320 same powers as if an application pursuant to K.S.A. 59-2913 and
0321 amendments thereto had been filed in the court.

0322 (c) The hearing shall be conducted in the same manner as
0323 hearings provided for in K.S.A. 59-2917 and amendments
0324 thereto, except that the hearing shall be to the court and the
0325 patient shall not have the right to demand a jury.

0326 (d) Upon completion of the hearing, if the court finds by clear
0327 and convincing evidence that the patient continues to be a
0328 mentally ill person, the court shall order continued treatment. If
0329 the court finds that it has not been shown by clear and convinc-
0330 ing evidence that the patient continues to be a mentally ill
0331 person, it shall discharge the patient. A copy of the court's order
0332 shall be sent by mail to the patient, the patient's attorney and the
0333 treatment facility to which the patient had been ordered.

0334 Sec. 20. K.S.A. 59-2924 is hereby amended to read as fol-
0335 lows: 59-2924. (a) ~~The director of mental health and retardation~~
0336 ~~services secretary of social and rehabilitation services or the~~
0337 ~~secretary's designee may transfer any patient from any institution~~
0338 ~~under the director's control to any other such institution when-~~
0339 ~~ever the director state psychiatric hospital under the secretary's~~
0340 ~~control to any other state psychiatric hospital whenever the~~
0341 ~~secretary or the secretary's designee considers it to be in the best~~
0342 ~~interest interests of the patient. Except in the case of an emer-~~
0343 ~~gency, the patient's next of kin or guardian, if one has been~~
0344 ~~appointed, shall be notified of the transfer, and notice shall be~~

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_____, the patient's guardian or other person in loco parentis

0345 sent to the committing court not less than 14 days before the
0346 proposed transfer. The notice shall state the location to which
0347 the transfer is proposed and state that, upon request of the next
0348 of kin or guardian, an opportunity for a hearing on the proposed
0349 transfer will be provided by the secretary of social and rehabil-
0350 itation services prior to such transfer.

0351 (b) The secretary of social and rehabilitation services or the
0352 designee of the secretary may transfer any involuntary patient
0353 from any state psychiatric hospital to any state institution for
0354 the mentally retarded whenever the secretary of social and
0355 rehabilitation services or the designee of the secretary considers
0356 it to be in the best interests of the patient. Any patient trans-
0357 ferred as provided in this subsection shall remain subject to the
0358 same statutory provisions as were applicable at the hospital
0359 from which ~~that~~ the patient was transferred and in addition
0360 thereto shall abide by and be subject to all the rules and
0361 regulations of the institution to which the patient has been
0362 transferred. Except in the case of an emergency, the patient's
0363 next of kin or guardian, if one has been appointed, shall be
0364 notified of the transfer, and notice shall be sent to the commit-
0365 ting court not less than 14 days before the proposed transfer.
0366 The notice shall state the location to which the transfer is
0367 proposed and state that, upon request of the next of kin or
0368 guardian, an opportunity for a hearing on the proposed transfer
0369 will be provided by the secretary of social and rehabilitation
0370 services prior to such transfer. No involuntary patient shall be
0371 transferred from a state psychiatric hospital to a state institu-
0372 tion for the mentally retarded unless the superintendent of the
0373 receiving institution has found that the patient is mentally
0374 retarded and in need of care and training and that placement in
0375 the institution is the least restrictive alternative available.
0376 Nothing in this subsection shall prevent the secretary of social
0377 and rehabilitation services or the designee of the secretary from
0378 allowing a person to be admitted as a voluntary resident to a
0379 state institution for the mentally retarded, or from discharging
0380 such person from a state psychiatric hospital.

0381 (c) When any proposed patient or involuntary patient has

0382 been ordered to any treatment facility ~~on referral or for treatment~~
0383 *pursuant to K.S.A. 59-2909, 59-2912, 59-2917 or 59-2918, and*
0384 *amendments thereto*, the head of the treatment facility shall
0385 discharge the patient when the patient is no longer in need of
0386 *treatment in the facility. The head of the treatment facility shall*
0387 *review and investigate all applications for involuntary admis-*
0388 *sion and, if appropriate, shall divert patients to less restrictive*
0389 *treatment alternatives before further judicial proceedings occur*
0390 *whenever it is deemed appropriate by the head of the treatment*
0391 *facility. If diversion from involuntary treatment is not appro-*
0392 *priate, the head of the treatment facility should be prepared to*
0393 *present evidence at the next hearing scheduled for the patient*
0394 *concerning further need for involuntary treatment.*
0395 (e) (d) The head of the treatment facility may release any
0396 involuntary patient *who has been committed for treatment pur-*
0397 *suant to K.S.A. 59-2917 or 59-2918, and amendments thereto*, on
0398 conditional release when the head of the treatment facility be-
0399 lieves that (1) the release is in the best ~~interest~~ interests of the
0400 patient and (2) the patient ~~will not be dangerous to self or is not~~
0401 *likely to cause harm to self or others* as long as the patient
0402 continues a plan of treatment *in the community*. The treatment
0403 facility shall formulate a plan of treatment for each patient
0404 released on conditional release. The plan of treatment may
0405 include any conditions which the head of the treatment facility
0406 considers to be in the best ~~interest~~ interests of the patient or
0407 necessary to ensure that the patient ~~will not be dangerous to self~~
0408 ~~or is not likely to cause harm to self or others~~. The conditions
0409 may include a requirement that the patient be supervised by and
0410 report to a treatment facility, which shall be responsible for
0411 ensuring that the patient complies with the conditions. The head
0412 of the treatment facility from which the patient is released may
0413 change the plan of treatment or the conditions specified in the
0414 plan whenever the head of the ~~treatment facility~~ considers it to
0415 be in the best ~~interest~~ interests of the patient or necessary to
0416 ensure that the patient ~~will not be dangerous to self or is not~~
0417 *likely to cause harm to self or others*. If the patient fails to
0418 comply with any conditions of the treatment plan and the head of

The treatment facility in the community shall inform the head of
the treatment facility from which the patient was discharged of
any material noncompliance with the treatment plan.

psychologist

0419 the treatment facility from which the patient is released deter-
 0420 mines that the failure to comply is likely to make the patient
 0421 dangerous to self or others, the head of the facility may revoke
 0422 the release and order the patient readmitted to the treatment
 0423 facility. The head of the treatment facility may authorize and
 0424 order ~~any peace a law enforcement~~ officer or other person to take
 0425 into custody and transport the patient to a treatment facility.
 0426 Prior to the end of the ~~first year~~ 120 days on conditional
 0427 release, and not less often than ~~annually~~ each 120 days thereafter
 0428 while an ~~involuntary~~ a patient is on conditional release, the head
 0429 of the treatment facility from which the patient is released shall
 0430 reexamine the facts relating to the treatment of the ~~involuntary~~
 0431 patient on conditional release.

0432 (e) The head of the treatment facility shall not discharge an
 0433 involuntary patient from conditional release unless at least
 0434 seven days' notice of the intention to discharge the patient is
 0435 given to ~~any other treatment facility which is involved in the~~
 0436 treatment plan for the patient.

0437 (f) Nothing in this section shall be construed to amend or
 0438 modify or repeal any law relating to the confinement of persons
 0439 charged with or convicted of a criminal offense.

0440 Sec. 21. K.S.A. 59-2926 is hereby amended to read as fol-
 0441 lows: 59-2926. (a) If any involuntary patient leaves the place of
 0442 ~~such~~ the patient's treatment without the authority of the head of
 0443 the treatment facility, the head of the treatment facility may
 0444 authorize and order, *either orally or in writing*, ~~any peace a law~~
 0445 *enforcement* officer or other person to take ~~such~~ the involuntary
 0446 patient into custody and transport such patient to ~~such place as~~
 0447 *may be a place* directed by the head of the treatment facility. *If*
 0448 *oral authorization is given, it shall be confirmed in writing as*
 0449 *soon as reasonably possible.*

0450 (b) In addition to the authority set forth in subsection (a),
 0451 the head of a treatment facility operated by the department of
 0452 social and rehabilitation services may take such reasonable
 0453 action as necessary to assure that a patient who is not dis-
 0454 charged from the treatment facility or otherwise authorized to
 0455 leave the treatment facility remains at or is returned to the

the patient's guardian, if any, and to

may call aboriginal

0456 *treatment facility.*

0457 Sec. 22. K.S.A. 59-2928 is hereby amended to read as fol-
0458 lows: 59-2928. (a) Restraints or seclusion shall not be applied to a
0459 patient unless it is determined by the head of the treatment
0460 facility or a member of the medical staff physician or psycholo-
0461 gist to be required to prevent substantial bodily injury to such
0462 patient or others. The extent of the restraint or seclusion applied
0463 to the patient shall be the least restrictive measure necessary to
0464 prevent injury to the patient or others, and the use of restraint or
0465 seclusion shall not exceed three (3) hours without medical re-
0466 evaluation, except that such medical reevaluation shall not be
0467 required, unless necessary, between the hours of ~~12 o'clock~~
0468 12:00 midnight and 8:00 o'clock a.m. The head of the treatment
0469 facility or a member of the medical staff physician or psycholo-
0470 gist shall sign a statement explaining the medical treatment
0471 necessity for the use of any restraint and seclusion and shall
0472 make such statement a part of the medical permanent treatment
0473 record of such patient.

0474 (b) *The provisions of subsection (a) shall not prevent, for a*
0475 *period not exceeding two hours without review and approval*
0476 *thereof by the head of the treatment facility or a physician or*
0477 *psychologist:*

0478 (1) *Staff at the state security hospital from confining pa-*
0479 *tients in their rooms when it is considered necessary for security*
0480 *or proper institutional management;*

0481 (2) *the use of such restraints as necessary for a patient who*
0482 *is likely to cause physical injury to self or others without the use*
0483 *of such restraints; or*

0484 (3) *the use of restraints when needed primarily for exami-*
0485 *nation or treatment or to insure the healing process.*

0486 Sec. 23. K.S.A. 59-2929 is hereby amended to read as fol-
0487 lows: 59-2929. (a) Every patient being treated in any treatment
0488 facility, in addition to all other rights preserved by the provisions
0489 of this act, shall have the following rights:

0490 (1) To wear ~~his or her~~ the patient's own clothes, keep and use
0491 ~~his or her~~ the patient's own personal possessions including toilet
0492 articles and keep and be allowed to spend ~~his or her~~ the patient's

When restraints or seclusion are applied, there shall be monitoring
of the patient's condition at a frequency determined by the treating
physician or psychologist, which shall be no less than once per hour.

by psychologists

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0493 own money;
0494 (2) to communicate by telephone, both to make and receive
0495 confidential calls, and by letter, both to mail and receive un-
0496 opened correspondence, except that if the head of the treatment
0497 facility should deny a patient's right to mail or to receive un-
0498 opened correspondence under the provisions of subsection (b) of
0499 ~~this section~~, such correspondence shall be opened and examined
0500 in the presence of the patient;

0501 (3) to conjugal visits if facilities are available for such visits;
0502 (4) to receive visitors each day;

0503 (5) to refuse involuntary labor and to be paid for any work
0504 performed other than the housekeeping of ~~his or her the pa-~~
0505 ~~tient's~~ own bedroom and bathroom *subject to the provisions of*
0506 *section 24*;

0507 (6) not to be subject to such procedures as psychosurgery,
0508 electroshock therapy, experimental medication, aversion therapy
0509 or hazardous treatment procedures without the written consent
0510 of the patient and the written consent of a parent, guardian or
0511 other person *in loco parentis*, if such patient has a living parent
0512 or a guardian or other person *in loco parentis*;

0513 (7) to have explained, ~~if requested~~, the nature of all medica-
0514 tions ~~and treatments~~ prescribed, the reason for the prescription
0515 and the most common side effects;

0516 (8) to communicate by letter with the secretary of social and
0517 rehabilitation services, the head of the treatment facility and any
0518 court, physician, *psychologist* or attorney, ~~and~~. All such commu-
0519 nications shall be forwarded at once to the addressee without
0520 examination and communications from such persons shall be
0521 delivered to the patient without examination;

0522 (9) to be visited by ~~his or her the patient's~~ physician, *psy-*
0523 *chologist* or attorney at ~~all times any time~~; and

0524 (10) to be informed orally and in writing of ~~his or her the~~
0525 ~~patient's~~ rights under this section upon admission to a treatment
0526 facility.

0527 (b) The head of the treatment facility may, for good cause
0528 only, restrict a patient's rights under this section, except that the
0529 rights enumerated in ~~subsection~~ *subsections* (a)(5) through

and, if requested, the nature of any other treatments ordered

psychologists

, minister of religion, including Christian Science practitioner

, minister of religion, including Christian Science practitioner

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0530 (a)(10) ~~of this section~~, and the right to mail any correspondence
 0531 which does not violate postal regulations, shall not be restricted
 0532 by the head of the treatment facility under any circumstances.
 0533 Each treatment facility shall adopt regulations governing the
 0534 conduct of all patients being treated in such treatment facility,
 0535 which regulations shall be consistent with the provisions of this
 0536 section. A statement explaining the reasons for any restriction of
 0537 a patient's rights shall be immediately entered on such patient's
 0538 medical record and copies of such statement shall be available to
 0539 the patient and the parent, guardian or person, *in loco parentis*, if
 0540 such patient is less than ~~eighteen (18)~~ 18 years of age, and the
 0541 patient's attorney.

0542 (c) Any person willfully depriving any patient of the rights
 0543 protected by this section, except for the restriction of such rights
 0544 in accordance with the provisions of subsection (b) ~~of this sec-~~
 0545 ~~tion~~, shall be guilty of a class C misdemeanor.

0546 New Sec. 24. (a) Patients shall have the right to perform
 0547 labor as part of a therapeutic program.

0548 (b) Patients may not be required to perform labor except as
 0549 specified in subsection (a)(5) of K.S.A. 59-2929 and amendments
 0550 thereto, and any patient labor that confers an economic benefit
 0551 on the institution beyond merely supplementing employee per-
 0552 formance of housekeeping tasks and routine institutional main-
 0553 tenance shall be compensated on a reasonable basis.

0554 Sec. 25. K.S.A. 59-2931 is hereby amended to read as fol-
 0555 lows: 59-2931. (a) The district court records, treatment records or
 0556 medical records of any patient or former patient that are in the
 0557 possession of any district court or treatment facility shall be
 0558 privileged and shall not be disclosed except ~~(1)~~ as otherwise
 0559 provided in this act; or ~~(2)~~ under any of the following conditions:

0560 ~~(A) (1) Upon the written consent, in writing, of the patient or~~
 0561 ~~former patient; or if the patient be under eighteen (18) years of~~
 0562 ~~age, by the patient's parent; or if the patient has a guardian, by~~
 0563 ~~such guardian. However, of (A) the patient or former patient, if~~
 0564 ~~an adult who has no guardian; (B) the patient's or former~~
 0565 ~~patient's guardian, if any; or (C) a parent, if the patient or~~
 0566 ~~former patient is under 18 years of age, except that a patient or~~

In addition, notice of any restriction of a patient's rights shall
 be communicated to such persons in a timely fashion.

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0567 former patient who is 14 or more years of age and who requested
0568 voluntary admission shall have capacity to consent to release of
0569 the records without parental consent. The head of any treatment
0570 facility, other than an adult care home, who has the records may
0571 refuse to disclose portions of such records if he or she shall have
0572 stated, the head of the treatment facility states in writing, that
0573 such disclosure will be injurious to the welfare of the patient or
0574 former patient.

0575 (B) (2) Upon the sole consent of the head of the treatment
0576 facility who has the records after a written statement, in writing,
0577 by such by the head of the treatment facility that such disclosure
0578 is necessary for the treatment of the patient or former patient.
0579 However, such The head may make such disclosure to the
0580 patient or any former patient, the patient's next of kin, any state
0581 or national accreditation agency, or scholarly investigator with-
0582 out making such determination except that but the head of the
0583 treatment facility shall require, before such disclosure is made, a
0584 pledge from any state or national accreditation agency or schol-
0585 arly investigator that such agency or investigation investigator
0586 will not disclose the name of any patient or former patient to any
0587 person not otherwise authorized by law to receive such infor-
0588 mation.

0589 (C) (3) Upon the order of any court of record after a determi-
0590 nation by the court issuing the order that such records are
0591 necessary for the conduct of proceedings before it and are oth-
0592 erwise admissible in as evidence.

0593 (D) (4) In proceedings under this act, upon the oral or writ-
0594 ten request of any attorney representing the patient, former
0595 patient, or applicant.

0596 ~~(5) To appropriate administrative or professional staff of~~
0597 ~~any community mental health center, as defined by K.S.A.~~
0598 ~~75-3307e and amendments thereto for purposes of promoting~~
0599 ~~continuity of care in the community following discharge or~~
0600 ~~conditional release. The patient or former patient's consent~~
0601 ~~shall not be necessary to release records to such a mental health~~
0602 ~~center.~~

0603 ~~(6) To appropriate administrative or professional staff of the~~

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0604 department of corrections whenever patients have been admin-
0605 istratively transferred to the state security hospital or other
0606 state psychiatric institutions pursuant to the provisions of
0607 K.S.A. 75-5209 and amendments thereto. The patient's or former
0608 patient's consent shall not be necessary to release information
0609 to the department of corrections.

0610 (b) Any person willfully violating this section shall be guilty
0611 of Willful violation of this section is a class C misdemeanor.

0612 New Sec. 26. (a) Medications and other treatments shall be
0613 prescribed, ordered and administered only in conformity with
0614 accepted clinical practice. Medication shall be administered
0615 only in accordance with the written order of a physician or upon
0616 a verbal order noted in the patient's medical records and sub-
0617 sequently signed by the physician. The attending physician shall
0618 review regularly the drug regimen of each patient or proposed
0619 patient under the physician's care and shall monitor any symp-
0620 toms of harmful side effects. Prescriptions for psychotropic
0621 medications shall be written with a termination date not ex-
0622 ceeding 30 days thereafter but may be renewed.

0623 (b) Any patient who is receiving treatment pursuant to the
0624 provisions of K.S.A. 59-2909, 59-2912, 59-2917 or 59-2918, and
0625 amendments thereto, ~~shall not have the right to refuse any~~
0626 ~~medication, including psychotropic medication, other than ex-~~
0627 ~~perimental medication, which is prescribed by a physician in~~
0628 ~~conformance with the provisions of this section. Although con-~~
0629 ~~sent to treatment is not required, during the course of treatment~~

and who objects to medication prescribed shall have such objection recorded and entered in the patient's medical record. If after a full explanation of the reasons for the medication such patient still objects to the medication, it may be administered over the patient's objections. Such objections must be submitted to administrative review by the medical director or psychiatric designee within five days of the objection. In no case shall experimental medication be administered without the patient's consent.

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0630 the responsible physician or psychologist shall consult with the
0631 patient, or the patient's guardian, and give consideration to the
0632 views the patient or guardian expresses concerning treatment
0633 and any alternatives.

0634 ~~(c)~~ Consent for medical or surgical treatments not intended
0635 primarily to treat a patient's mental disorder shall be obtained in
0636 accordance with applicable law.

0637 Sec. 27. K.S.A. 59-2940 is hereby amended to read as fol-
0638 lows: 59-2940. Whenever any person is taken into custody by an
0639 arresting officer and such officer has reasonable grounds to
0640 believe that such person has violated K.S.A. 21-3420, 21-3421,

(c) or such person's designee

(d)

0641 21-3422, 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3507,
0642 21-3508, 21-3509, 21-3510, 21-3511, 21-3512, 21-3513, 21-3602 or
0643 21-3603, ~~or any~~ and amendments thereto, the officer shall forth-
0644 with report such facts to the county *or district* attorney by a
0645 written report under oath, and the county *or district* attorney
0646 may submit such report to the judge of the district court. If the
0647 court finds from an examination of ~~said~~ *the* report that there is
0648 evidence raising the issue of the sanity of such person who was
0649 arrested, the court shall direct the county *or district* attorney to
0650 sign and file a petition to institute proceedings in accordance
0651 with K.S.A. 59-2901 to 59-2939, ~~inclusive, and any amendments~~
0652 ~~thereto, the same being the act for obtaining care and treatment~~
0653 ~~for a mentally ill person the treatment act for mentally ill~~
0654 ~~persons.~~

0655 Sec. 28. K.S.A. 1984 Supp. 22-3428 is hereby amended to
0656 read as follows: 22-3428. (1) When a person is acquitted on the
0657 ground that the person was insane at the time of the commission
0658 of the alleged crime, the verdict shall be not guilty because of
0659 insanity and the person shall be committed to the state security
0660 hospital for safekeeping and treatment. A finding of not guilty by
0661 reason of insanity shall constitute a finding that the acquitted
0662 person committed an act constituting the offense charged or an
0663 act constituting a lesser included crime, except that the person
0664 did not possess the requisite criminal intent. A finding of not
0665 guilty because of insanity shall be prima facie evidence that the
0666 acquitted person is presently ~~dangerous to the person's self or~~
0667 ~~others or a substantial danger to the property of likely to cause~~
0668 *harm to self or others.*

0669 (2) Whenever it appears to the chief medical officer of the
0670 state security hospital that a person committed under this section
0671 is not dangerous to other patients, the officer may transfer the
0672 person to any state hospital. Any person committed under this
0673 section may be granted convalescent leave or discharge as an
0674 involuntary patient after 30 days' notice has been given to the
0675 district or county attorney, sheriff and district court of the county
0676 from which the person was committed.

0677 (3) Within 15 days after the receipt of the notice provided for

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0678 in subsection (2), the district or county attorney may request that
0679 a hearing on the proposed leave or discharge be held. Upon
0680 receiving the request, the district court shall order that a hearing
0681 be held on the proposed leave or discharge. The court shall give
0682 notice of the hearing to the state hospital where the patient was
0683 transferred and shall order the involuntary patient to undergo a
0684 mental evaluation by a person designated by the court. A copy of
0685 all orders of the court shall be sent to the involuntary patient and
0686 the patient's attorney. The report of the court ordered mental
0687 evaluation shall be given to the district or county attorney, the
0688 involuntary patient and the patient's attorney at least five days
0689 prior to the hearing. The hearing shall be held within 30 days
0690 after the receipt by the court of the district or county attorney's
0691 request. The involuntary patient shall remain in the state hospi-
0692 tal until the hearing on the proposed leave or discharge is to be
0693 held. At the hearing, the court shall receive all relevant evi-
0694 dence, including the written findings and recommendations of
0695 the chief medical officer of the state security hospital or the state
0696 hospital where the patient is under commitment, and shall de-
0697 termine whether the patient continues to be a ~~danger to the~~
0698 ~~patient's self or others or a substantial danger to the property of~~
0699 *likely to cause harm to self or others*. The patient shall have the
0700 right to present evidence at such hearing and to cross-examine
0701 any witnesses called by the district or county attorney. At the
0702 conclusion of the hearing, if the court finds that the patient
0703 continues to be a ~~danger to the patient's self or others or a~~
0704 ~~substantial danger to the property of~~ *likely to cause harm to self*
0705 *or others*, the court shall order the patient to remain in the state
0706 hospital, otherwise the court shall order the patient discharged
0707 or conditionally released. If the court finds from evidence pre-
0708 sented at the hearing that the discharge of the patient ~~will not~~
0709 ~~pose a danger to the patient's self or others or a substantial~~
0710 ~~danger to the property of~~ *is not likely to cause harm to self or*
0711 *others* if the patient continues to take prescribed medication or to
0712 receive periodic psychiatric ~~or psychological~~ treatment ~~or guid-~~
0713 ~~ance counseling~~, the court may order the patient conditionally
0714 released in accordance with subsection (4). If the court orders

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0715 the conditional release of the patient, the court may order as an
0716 additional condition to the release that the patient continue to
0717 take prescribed medication and report as directed to a person
0718 licensed to practice medicine and surgery to determine whether
0719 or not the patient is taking the medication or that the patient
0720 continue to receive periodic psychiatric *or psychological* treat-
0721 ment ~~or guidancee~~ *counseling*.

0722 (4) In order to insure the safety and welfare of a patient who
0723 is to be conditionally released and the citizenry of the state the
0724 court may allow the patient to remain in custody at a facility
0725 under the supervision of the secretary of social and rehabilitation
0726 services for a period of time not to exceed 30 days in order to
0727 permit sufficient time for the secretary to prepare recommenda-
0728 tions to the court for a suitable reentry program for the patient.
0729 The reentry program shall be specifically designed to facilitate
0730 the return of the patient to the community as a functioning,
0731 selfsupporting citizen, and may include appropriate supportive
0732 provisions for assistance in establishing residency, securing
0733 gainful employment, undergoing needed vocational rehabilita-
0734 tion, receiving marital and family counseling, and such other
0735 outpatient services that appear beneficial. If a patient who is to
0736 be conditionally released will be residing in a county other than
0737 the county where the district court that ordered the conditional
0738 release is located, the court shall transfer venue of the case to the
0739 district court of the other county and send a copy of all of the
0740 court's records of the proceedings to the other court. In all cases
0741 of conditional release the court shall: (a) Order that the patient
0742 be placed under the temporary supervision of state parole and
0743 probation services, district court probation and parole services or
0744 any appropriate private agency; and (b) require as a condition
0745 precedent to the release that the patient agree in writing to waive
0746 extradition in the event a warrant is issued pursuant to K.S.A.
0747 22-3428b and amendments thereto.

0748 (5) At any time during the conditional release period, a con-
0749 ditionally released patient, through the patient's attorney, or the
0750 county or district attorney of the county in which the district
0751 court having venue is located may file a motion for modification

0010 of the conditions of release, and the court shall hold an eviden-
0011 tiary hearing on the motion within 15 days of its filing. The court
0012 shall give notice of the time for the hearing to the patient and the
0013 county or district attorney. If the court finds from the evidence at
0014 the hearing that the conditional provisions of release should be
0015 modified or vacated, it shall so order. If at any time during the
0016 transitional period the designated medical officer or supervisory
0017 personnel *or the treatment facility* informs the court that the
0018 patient is not satisfactorily complying with the provisions of the
0019 conditional release, the court, after a hearing for which notice
0020 has been given to the county or district attorney and the patient,
0021 may make orders: (a) For additional conditions of release de-
0022 signed to effect the ends of the reentry program, (b) requiring the
0023 county or district attorney to file an application to determine
0024 whether the patient is a mentally ill person as provided in K.S.A.
0025 ~~1982 Supp.~~ 59-2913 *and amendments thereto*, or (c) requiring
0026 that the patient be committed to the state security hospital or any
0027 state hospital. In cases where an application is ordered to be
0028 filed, the court shall proceed to hear and determine the applica-
0029 tion pursuant to the ~~act for obtaining treatment for a mentally ill~~
0030 ~~person treatment act for mentally ill persons~~ and that act shall
0031 apply to all subsequent proceedings. The costs of all proceed-
0032 ings, the mental evaluation and the reentry program authorized
0033 by this section shall be paid by the county from which the person
0034 was committed.

0035 (6) In any case in which the defense of insanity is relied on,
0036 the court shall instruct the jury on the substance of this section.

0037 (7) *As used in this section and K.S.A. 22-3428a and amend-*
0038 *ments thereto, "likely to cause harm to self or others" has the*
0039 *meaning provided by K.S.A. 59-2902 and amendments thereto.*

0040 Sec. 29. K.S.A. 1984 Supp. 22-3428a is hereby amended to
0041 read as follows: 22-3428a. (1) Any person found not guilty be-
0042 cause of insanity who remains in the state security hospital or a
0043 state hospital for over one year pursuant to a commitment under
0044 K.S.A. ~~1982 Supp.~~ 22-3428 *and amendments thereto* shall be
0045 entitled annually to request a hearing to determine whether or
0046 not the person continues to be ~~dangerous to the person's self or~~

0047 ~~others or a substantial danger to the property of likely to cause~~
0048 ~~harm to self or others.~~ The request shall be made in writing to
0049 the district court of the county where the person is hospitalized
0050 and shall be signed by the committed person or the person's
0051 counsel. When the request is filed, the court shall give notice of
0052 the request to: (a) The county or district attorney of the county in
0053 which the person was originally ordered committed, and (b) the
0054 chief medical officer of the state security hospital or state hospi-
0055 tal where the person is committed. The chief medical officer
0056 receiving the notice or the officer's designee, shall conduct a
0057 mental examination of the person and shall send to the district
0058 court of the county where the person is hospitalized and to the
0059 county or district attorney of the county in which the person was
0060 originally ordered committed a report of the examination within
0061 20 days from the date when notice from the court was received.
0062 Within five days after receiving the report of the examination,
0063 the county or district attorney receiving it may file a motion with
0064 the district court that gave the notice, requesting the court to
0065 change the venue of the hearing to the district court of the county
0066 in which the person was originally committed, or the court that
0067 gave the notice on its own motion may change the venue of the
0068 hearing to the district court of the county in which the person
0069 was originally committed. Upon receipt of that motion and the
0070 report of the mental examination or upon the court's own motion,
0071 the court shall transfer the hearing to the district court specified
0072 in the motion and send a copy of the court's records of the
0073 proceedings to that court.

0074 (2) After the time in which a change of venue may be re-
0075 quested has elapsed, the court having venue shall set a date for
0076 the hearing, giving notice thereof to the county or district attor-
0077 ney of the county, the committed person and the person's coun-
0078 sel. If there is no counsel of record, the court shall appoint a
0079 counsel for the committed person. The committed person shall
0080 have the right to procure, at the person's own expense, a mental
0081 examination by a physician or certified psychologist of the per-
0082 son's own choosing. If a committed person is financially unable
0083 to procure such an examination, the aid to indigent defendants

0084 provisions of article 45 of chapter 22 of the Kansas Statutes
0085 Annotated shall be applicable to that person. A committed per-
0086 son requesting a mental examination pursuant to K.S.A. 4982
0087 ~~Supp. 22-4508 and amendments thereto~~ may request a physician
0088 or certified psychologist of the person's own choosing and the
0089 court shall request the physician or certified psychologist to
0090 provide an estimate of the cost of the examination. If the physi-
0091 cian or certified psychologist agrees to accept compensation in
0092 an amount in accordance with the compensation standards set by
0093 the board of supervisors of panels to aid indigent defendants, the
0094 judge shall appoint the requested physician or certified psy-
0095 chologist; otherwise, the court shall designate a physician or
0096 certified psychologist to conduct the examination. Copies of each
0097 mental examination of the committed person shall be filed with
0098 the court at least five days prior to the hearing and shall be
0099 supplied to the county or district attorney receiving notice pur-
0100 suant to this section and the committed person's counsel.

0101 (3) At the hearing the committed person shall have the right
0102 to present evidence and cross-examine the witnesses. The court
0103 shall receive all relevant evidence, including the written find-
0104 ings and recommendations of the chief medical officer of the
0105 state security hospital or state hospital where the person is under
0106 commitment, and shall determine whether the committed per-
0107 son continues to be a danger to the person's self or others or a
0108 ~~substantial danger to the property of likely to cause harm to self~~
0109 ~~or others.~~ At the hearing the court may make any order that a
0110 court is empowered to make pursuant to subsections (3), (4) and
0111 (5) of K.S.A. 22-3428 and amendments thereto. If the court finds
0112 the committed person is no longer ~~dangerous to the person's self~~
0113 ~~or others or a substantial danger to the property of likely to cause~~
0114 ~~harm to self or others,~~ the court shall order the person dis-
0115 charged; otherwise, the person shall remain committed or be
0116 conditionally released.

0117 (4) Costs of a hearing held pursuant to this section shall be
0118 assessed against and paid by the county in which the person was
0119 originally ordered committed.

0120 Sec. 30. K.S.A. 1984 Supp. 28-170 is hereby amended to read

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0121 as follows: 28-170. (a) The docket fee prescribed by K.S.A.
 0122 60-2001 and amendments thereto shall be the only costs as-
 0123 sessed for services of the clerk of the district court and the sheriff
 0124 in any case filed under chapter 60 of the Kansas Statutes Anno-
 0125 tated. For services in other matters in which no other fee is
 0126 prescribed by statute, the following fees shall be charged and
 0127 collected by the clerk. Only one fee shall be charged for each
 0128 bond, lien or judgment:

- | | | |
|------|---|-----|
| 0129 | 1. For filing, entering and releasing a bond, mechanic's lien, | |
| 0130 | personal property tax judgment or any judgment on which | |
| 0131 | execution process cannot be issued | \$5 |
| 0133 | 2. For filing, entering and releasing a judgment of a court of this | |
| 0134 | state on which execution or other process can be issued | 15 |
| 0136 | 3. For a certificate, or for copying or certifying any paper or writ, | |
| 0137 | such fee as shall be prescribed by the district court. | |

0139 (b) The fees for entries, certificates and other papers re-
 0140 quired in naturalization cases shall be those prescribed by the
 0141 federal government and, when collected, shall be disbursed as
 0142 prescribed by the federal government. The clerk of the court
 0143 shall remit to the state treasurer at least monthly all moneys
 0144 received from fees prescribed by subsection (a) or (b) or received
 0145 for any services performed which may be required by law. The
 0146 state treasurer shall deposit the remittance in the state treasury
 0147 and credit the entire amount to the state general fund.

0148 (c) In actions pursuant to the Kansas code for care of children
 0149 (K.S.A. 1984 Supp. 38-1501 et seq. and amendments thereto), the
 0150 Kansas juvenile offenders code (K.S.A. 1984 Supp. 38-1601 et
 0151 seq. and amendments thereto), the act for treatment of alcoholism
 0152 ~~(article 40 of chapter 65)~~ (K.S.A. 65-4001 et seq. and amendments
 0153 thereto), the act for treatment of drug abuse (K.S.A. 1984 Supp.
 0154 65-5201 et seq. and amendments thereto) or the act for obtaining
 0155 treatment for a mentally ill person ~~treatment act for mentally ill~~
 0156 persons (K.S.A. 59-2901 et seq. and amendments thereto), the
 0157 clerk shall charge an additional fee of \$.50 which shall be
 0158 deducted from the docket fee and credited to the prosecuting
 0159 attorneys' training fund as provided in K.S.A. 28-170a and
 0160 amendments thereto.

0161 Sec. 31. K.S.A. 1984 Supp. 38-1513 is hereby amended to
 0162 read as follows: 38-1513. (a) *Physical care and Treatment.* (1)
 0163 When a child less than 18 years of age is alleged to have been

0164 sexually abused, no consent shall be required to medically
0165 examine the child to determine whether there has been sexual
0166 abuse.

0167 (2) When the health or condition of a child who is a ward of
0168 the court requires it, the court may consent to the performing and
0169 furnishing of hospital, medical, surgical or dental treatment or
0170 procedures, including the release and inspection of medical or
0171 dental records. A child, or parent of any child, who is an adherent
0172 of a religious denomination whose religious teachings are op-
0173 posed to certain medical procedures authorized by this subsec-
0174 tion may request an opportunity for a hearing thereon before the
0175 court. Subsequent to the hearing, the court may limit the per-
0176 formance of matters provided for in this subsection or may
0177 authorize the performance of those matters subject to terms and
0178 conditions the court considers proper.

0179 (3) Prior to adjudication the person having custody of the
0180 child may give consent to the following:

0181 (A) Dental treatment for the child by a licensed dentist;

0182 (B) diagnostic examinations of the child, including but not
0183 limited to the withdrawal of blood or other body fluids, x-rays
0184 and other laboratory examinations;

0185 (C) releases and inspections of the child's medical history
0186 records;

0187 (D) immunizations for the child; and

0188 (E) administration of lawfully prescribed drugs to the child.

0189 (4) When the court has granted legal custody of a child in a
0190 dispositional hearing to any agency, association or individual,
0191 the custodian or an agent designated by the custodian shall have
0192 authority to consent to the performance and furnishing of hospi-
0193 tal, medical, surgical or dental treatment or procedures including
0194 the release and inspection of medical or hospital records, subject
0195 to terms and conditions the court considers proper.

0196 (5) Any health care provider who in good faith renders hos-
0197 pital, medical, surgical or dental care or treatment to any child
0198 after a consent has been obtained as authorized by this section
0199 shall not be liable in any civil or criminal action for failure to
0200 obtain consent of a parent.

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0201 (6) Nothing in this section shall be construed to mean that
0202 any person shall be relieved of legal responsibility to provide
0203 care and support for a child.

0204 (b) *Mental care and treatment.* If it is brought to the court's
0205 attention, while the court is exercising jurisdiction over the
0206 person of a child under this code, that the child may be a
0207 mentally ill person as defined in K.S.A. 59-2902 and amend-
0208 ments thereto, the court may:

0209 (1) Direct or authorize the county or district attorney or the
0210 person supplying the information to file the application provided
0211 for in K.S.A. 59-2913 and amendments thereto and proceed to
0212 hear and determine the issues raised by the application as
0213 provided in the ~~aet for obtaining treatment for a mentally ill~~
0214 ~~person~~ *treatment for mentally ill persons*; or

0215 (2) authorize that the child seek voluntary admission to a
0216 treatment facility as provided in K.S.A. 59-2905 and amendments
0217 thereto.

0218 The application to determine whether the child is a mentally
0219 ill person may be filed in the same proceedings as the petition
0220 alleging the child to be a child in need of care, or may be brought
0221 in separate proceedings. In either event the court may enter an
0222 order staying any further proceedings under this code until all
0223 proceedings have been concluded under the ~~aet for obtaining~~
0224 ~~treatment for a mentally ill person~~ *treatment for mentally ill*
0225 *persons.*

0226 Sec. 32. K.S.A. 1984 Supp. 38-1614 is hereby amended to
0227 read as follows: 38-1614. (a) *Physical care and treatment.* (1)
0228 When the health or condition of a juvenile who is subject to the
0229 jurisdiction of the court requires it, the court may consent to the
0230 performing and furnishing of hospital, medical, surgical or dental
0231 treatment or procedures including the release and inspection of
0232 medical or dental records.

0233 (2) When the health or condition of a juvenile requires it and
0234 the juvenile has been placed in the custody of a person other
0235 than a parent or placed in or committed to a facility, the custo-
0236 dian or an agent designated by the custodian shall have authority
0237 to consent to the performance and furnishing of hospital, medi-

0238 cal, surgical or dental treatment or procedures including the
0239 release and inspection of medical or dental records, subject to
0240 terms and conditions the court considers proper.

0241 (3) Any health care provider, who in good faith renders
0242 hospital, medical, surgical or dental care or treatment to any
0243 juvenile after a consent has been obtained as authorized by this
0244 section, shall not be liable in any civil or criminal action for
0245 failure to obtain consent of a parent.

0246 (4) Nothing in this section shall be construed to mean that
0247 any person shall be relieved of legal responsibility to provide
0248 care and support for a juvenile.

0249 (b) *Mental care and treatment.* If it is brought to the court's
0250 attention, while the court is exercising jurisdiction over the
0251 person of a juvenile under this code, that the juvenile may be a
0252 mentally ill person as defined in K.S.A. 59-2902 and amend-
0253 ments thereto, the court may:

0254 (1) Direct or authorize the county or district attorney or the
0255 person supplying the information to file the application provided
0256 for in K.S.A. 59-2913 and amendments thereto and proceed to
0257 hear and determine the issues raised by the application as
0258 provided in the ~~aet for obtaining treatment for a mentally ill~~
0259 ~~person~~ *treatment act for mentally ill persons*; or

0260 (2) authorize that the juvenile seek voluntary admission to a
0261 treatment facility as provided in K.S.A. 59-2905 and amendments
0262 thereto.

0263 The application to determine whether the juvenile is a men-
0264 tally ill person may be filed in the same proceedings as the
0265 petition alleging the juvenile to be a juvenile offender or may be
0266 brought in separate proceedings. In either event, the court may
0267 enter an order staying any further proceedings under this code
0268 until all proceedings have been concluded under the ~~aet for~~
0269 ~~obtaining treatment for a mentally ill person~~ *treatment act for*
0270 *mentally ill persons.*

0271 Sec. 33. K.S.A. 59-212 is hereby amended to read as follows:
0272 59-212. The following shall be kept by the court for proceedings
0273 under chapter 59 of the Kansas Statutes Annotated:

0274 (1) An appearance docket, in which shall be listed under the

0275 name of the decedent, ward, conservatee, mentally ill person, or
0276 other person involved, all documents pertaining thereto and in
0277 the order filed, except that separate appearance dockets, not
0278 open to public inspection shall be kept for proceedings under
0279 the ~~act for obtaining treatment for a mentally ill person~~ *treatment*
0280 *act for mentally ill persons* and adoptions. Such list shall show
0281 the nature of the document, the date of the filing thereof, shall
0282 give a reference to the volume and page of any other book or
0283 reference to microfilm in which any record shall have been made
0284 of such document, and shall state the charge, if any, therefor.

0285 (2) A suitable general index, in which files pertaining to
0286 estates of decedents shall be indexed under the name of the
0287 decedent, those pertaining to guardianships under the name of
0288 the ward, those pertaining to conservatorships under the name of
0289 the conservatee, those pertaining to mentally ill persons under
0290 the name of such person, those pertaining to adoption of children
0291 under both the name and adopted name of the child. After the
0292 name of each file shall be shown the file number, the appearance
0293 docket sheet, by case number, on which the documents pertain-
0294 ing to such file are listed, and the date of filing of the first
0295 document.

0296 (3) A suitable index pertaining to wills deposited pursuant to
0297 K.S.A. 59-620 *and amendments thereto*, under the name of the
0298 testator.

0299 (4) A suitable permanent duplicate copy, shall be kept by the
0300 district court of: (1) All wills admitted to probate; (2) all elections
0301 filed; (3) all letters of appointment issued; (4) all certificates of
0302 appointment filed; (5) all bonds filed; (6) all orders, judgments,
0303 and decrees, including inheritance tax orders; *and* (7) such other
0304 documents as the court may determine.

0305 Sec. 34. K.S.A. 59-2212 is hereby amended to read as fol-
0306 lows: 59-2212. Trials and hearings in probate proceedings shall
0307 be by the court unless otherwise provided by law. The determi-
0308 nation of any issue of fact or controverted matter on the hearing
0309 of any probate proceedings shall be in accordance with the rules
0310 of evidence provided for civil cases by the code of civil pro-
0311 cedure, except as provided in the ~~act~~ entitled "~~act for obtaining~~

0312 care or treatment for a mentally ill person" and in the act entitled
0313 "act treatment act for mentally ill persons and the act for
0314 obtaining a guardian or conservator, or both."

0315 Sec. 35. K.S.A. 59-3002 is hereby amended to read as fol-
0316 lows: 59-3002. When used in the act for obtaining a guardian or
0317 conservator, or both:

0318 (a) "Disabled person" means any adult person whose ability to
0319 receive and evaluate information effectively or to communicate
0320 decisions, or both, is impaired to such an extent that the person
0321 lacks the capacity to manage such person's financial resources or,
0322 *except for reason of indigency*, to meet essential requirements
0323 for such person's physical health or safety, or both. A person shall
0324 not be considered to be disabled or to lack capacity to meet the
0325 essential requirements for physical health or safety for the sole
0326 reason such person relies upon or is being furnished treatment
0327 by spiritual means through prayer in lieu of medical treatment in
0328 accordance with the tenets and practices of a recognized church
0329 or religious denomination of which such person is a member or
0330 adherent.

0331 (b) "Manage financial resources" means those actions nec-
0332 essary to obtain, administer and dispose of real and personal
0333 property, intangible property, business property, benefits and
0334 income.

0335 (c) "Meet essential requirements for physical health or
0336 safety" means those actions necessary to provide the health care,
0337 food, shelter, clothing, personal hygiene and other care without
0338 which serious physical injury or illness is more likely than not to
0339 occur.

0340 (d) "Guardian" means an individual or a nonprofit corpora-
0341 tion certified in accordance with K.S.A. 59-3037 *and amend-*
0342 *ments thereto* which has been appointed by a court to act on
0343 behalf of a ward and possessed of some or all of the powers and
0344 duties set out in K.S.A. 59-3018 and amendments thereto.

0345 "Guardian" does not mean natural guardian unless specified.

0346 (e) "Natural guardian" means both the father and mother of a
0347 legitimate minor or the mother of an illegitimate minor, provided
0348 that both such parents or parent shall not have been found to be a

0349 disabled person or had their parental rights severed by a court of
0350 competent jurisdiction. If either parent of a legitimate minor
0351 dies, or has been found to be a disabled person or has had
0352 parental rights severed by a court of competent jurisdiction, the
0353 other shall be the "natural guardian."

0354 (f) "Conservator" means an individual or a corporation ap-
0355 pointed by the court to act on behalf of a conservatee and
0356 possessed of some or all of the powers and duties set out in
0357 K.S.A. 59-3019 and amendments thereto.

0358 (g) "Minor" means any person defined by K.S.A. 38-101 and
0359 amendments thereto as being within the period of minority.

0360 (h) "Proposed ward" means a person for whom a petition for
0361 the appointment of a guardian pursuant to K.S.A. 59-3006 and
0362 amendments thereto has been filed.

0363 (i) "Proposed conservatee" means a person for whom a peti-
0364 tion for the appointment of a conservator pursuant to K.S.A.
0365 59-3006 and amendments thereto has been filed.

0366 (j) "Ward" means a person who has a guardian.

0367 (k) "Conservatee" means a person who has a conservator.

0368 (l) The various terms defined in K.S.A. 59-2902 and amend-
0369 ments thereto of the act entitled "~~act for obtaining care or~~
0370 ~~treatment for a mentally ill person~~" mean the same herein as
0371 they do in that act *have the meanings provided by that section.*

0372 Sec. 36. K.S.A. 59-3018 is hereby amended to read as fol-
0373 lows: 59-3018. (a) A guardian shall be subject to the control and
0374 direction of the court at all times and in all things. It is the
0375 general duty of an individual or corporation appointed to serve as
0376 a guardian to carry out diligently and in good faith the specific
0377 duties and powers assigned by the court. In carrying out these
0378 duties and powers, the guardian shall assure that personal, civil
0379 and human rights of the ward or minor whom the guardian
0380 services are protected.

0381 (b) The guardian of a minor shall be entitled to the custody
0382 and control of the ward and shall provide for the ward's educa-
0383 tion, support and maintenance.

0384 (c) A limited guardian shall have only such of the general
0385 duties and powers herein set out as shall be specifically set forth

0386 in the dispositional order pursuant to K.S.A. 59-3013 and
0387 amendments thereto and as shall also be specifically set forth in
0388 "Letters of Limited Guardianship" pursuant to K.S.A. 59-3014
0389 and amendments thereto.

0390 (d) A guardian shall have all of the general duties and powers
0391 as set out herein and as also set out in the dispositional order and
0392 in the letters of guardianship.

0393 (e) The general powers and duties of a guardian shall be to
0394 take charge of the person of the ward and to provide for the
0395 ward's care, treatment, habilitation, education, support and
0396 maintenance and to file an annual accounting. The powers and
0397 duties shall include, but not be limited to, the following:

0398 (1) Assuring that the ward resides in the least restrictive
0399 setting reasonably available;

0400 (2) assuring that the ward receives medical care or nonmedi-
0401 cal remedial care and other services that are needed;

0402 (3) promoting and protecting the care, comfort, safety, health
0403 and welfare of the ward;

0404 (4) providing required consents on behalf of the ward;

0405 (5) exercising all powers and discharging all duties necessary
0406 or proper to implement the provisions of this section.

0407 (f) A guardian of a ward is not obligated by virtue of the
0408 guardian's appointment to use the guardian's own financial re-
0409 sources for the support of the ward.

0410 (g) A guardian shall not have the power:

0411 (1) To place a ward in a facility or institution unless such
0412 ~~treatment facility unless the placement has been approved for~~
0413 ~~that person by the court, except that a ward may be placed in a~~
0414 ~~treatment facility under the act for obtaining treatment for a~~
0415 ~~mentally ill person only after a hearing conducted in accordance~~
0416 ~~with the provisions of K.S.A. 59-2017 and amendments thereto~~
0417 ~~and a finding by the court under that section that the ward is in~~
0418 ~~need of treatment at a treatment facility. Except as otherwise~~
0419 ~~provided by law, a ward may voluntarily consent to the admis-~~
0420 ~~sion of oneself to such a facility or institution if able and permit-~~
0421 ~~ted to do so according to the court's findings of fact set forth in~~
0422 ~~the court's order issued at the conclusion of the hearing on the~~

0423 petition for guardianship [facility or institution, other than a
0424 treatment facility, unless the placement of the ward has been
0425 approved by the court.

0426 (2) To place a ward in a treatment facility unless authorized
0427 by the court] pursuant to section 37.

0428 (2) [(3)] To consent, on behalf of a ward, to psychosurgery,
0429 removal of a bodily organ, or amputation of a limb unless the
0430 procedure is first approved by order of the court or is necessary,
0431 in an emergency situation, to preserve the life or prevent serious
0432 impairment of the physical health of the ward.

0433 (3) [(4)] To consent on behalf of the ward to the withholding
0434 of life-saving medical procedures, except in accordance with
0435 provisions of K.S.A. 65-28,101 to 65-28,109, inclusive through
0436 65-28,109, and amendments thereto.

0437 (4) [(5)] To consent on behalf of a ward to the performance of
0438 any experimental biomedical or behavioral procedure or to par-
0439 ticipation in any biomedical or behavioral experiment unless:

0440 (A) It is intended to preserve the life or prevent serious
0441 impairment of the physical health of the ward; or

0442 (B) it is intended to assist the ward to develop or regain that
0443 person's abilities and has been approved for that person by the
0444 court.

0445 (5) [(6)] To prohibit the marriage or divorce of a ward.

0446 (6) [(7)] To consent, on behalf of a ward, to the termination of
0447 the ward's parental rights.

0448 (7) [(8)] To consent, on behalf of a ward, to sterilization of the
0449 ward, unless the procedure is first approved by order of the court
0450 after a full due process hearing where the ward is represented by
0451 a guardian *ad litem*.

0452 (h) The guardian shall at least annually file a report concern-
0453 ing the personal status of the ward as provided by K.S.A. 59-3029
0454 and amendments thereto.

0455 New Sec. 37. (a) A guardian may file with the court a verified
0456 petition to place the guardian's ward in a treatment facility. Upon
0457 the filing of such petition, the court shall issue the following:

0458 (1) An order fixing the time and place of the hearing on the
0459 petition. The time designated in the order shall in no event be

, including a facility for the mentally retarded,

*No Regard
Services, Rate*

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0460 earlier than seven days or later than 14 days after the date of the
0461 filing of the petition.

0462 (2) An order that the ward appear at the time and place of the
0463 hearing unless the court enters an order that the presence of the
0464 ward would be injurious to the ward's welfare. The court shall
0465 enter in the record of the proceedings the facts upon which the
0466 court has found that the presence of the ward at the hearing
0467 would be injurious to the ward's welfare. Notwithstanding the
0468 foregoing provisions of this subsection, if the ward or the ward's
0469 attorney files with the court a written request that the ward be
0470 present at the hearing, the ward's presence cannot be waived.

0471 (3) An order appointing an attorney to represent the ward at
0472 all stages of the proceedings. The court shall give preference, in
0473 the appointment of the attorney, to any attorney who has repre-
0474 sented the ward in other matters if the court has knowledge of
0475 the prior relationship. The ward shall have the right to choose
0476 and to engage an attorney and, in that event, the attorney ap-
0477 pointed by the court shall be relieved of all duties by the court.

0478 (4) An order that the ward appear at the time and place that is
0479 in the best interest of the ward to consult with the court ap-
0480 pointed attorney, which time shall be prior to the hearing on the
0481 petition.

0482 (5) Notice in the manner provided by subsections (a)(1)(A)
0483 through (C), (a)(2) and (b) of K.S.A. 59-3012 and amendments
0484 thereto.

0485 (b) At or after the filing of a petition pursuant to this section,
0486 the court may issue the following:

0487 (1) An order for mental evaluation in the manner provided by
0488 subsection (a)(6) of K.S.A. 59-3012 and amendments thereto.

0489 (2) An order of continuance, for good cause shown, upon
0490 request of the petitioner, the ward or the ward's attorney.

0491 (3) An order advancing the date of the hearing to as early a
0492 date as is practicable upon request of the ward or the ward's
0493 attorney.

0494 (c) The hearing on a petition filed pursuant to this section
0495 shall be held at the time and place specified in the court's order
0496 unless an advancement or continuance has been granted. The

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0497 hearing shall be to the court only. The petitioner and the ward
0498 shall be afforded an opportunity to appear at the hearing, to
0499 testify and to present and cross-examine witnesses. All persons
0500 not necessary for the conduct of the hearing may be excluded.
0501 The hearing shall be conducted in as informal a manner as may
0502 be consistent with orderly procedure and in a physical setting
0503 not likely to have a harmful effect on the ward. The court shall
0504 receive all relevant and material evidence which may be offered,
0505 including the testimony or written findings and recommenda-
0506 tions of the treatment facility, hospital, clinic, physician or psy-
0507 chologist who has examined or evaluated the ward. Such evi-
0508 dence shall not be privileged for the purpose of this hearing.

criteria set out in either K.S.A. 59-2902a or 76-12b03 and amendments thereto are met, and after a careful consideration of reasonable alternatives to placement treatment

0509 If, upon the completion of the hearing, the court finds by clear
0510 and convincing evidence that the ~~ward is in need of mental~~
0511 ~~treatment and that commitment to a treatment facility would be~~
0512 ~~in the best interest of the ward,~~ the court may enter an order
0513 authorizing the guardian to commit the ward to a treatment
0514 facility. The order of the court shall be for a period of time to be
0515 ~~determined by the court but not exceeding three years.~~

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0516 (d) Except as otherwise provided by law, a ward may volun-
0517 tarily consent to the ward's admission to a treatment facility if
0518 able and permitted to do so according to the court's findings of
0519 fact set forth in the court's order issued at the conclusion of the
0520 hearing on the petition for guardianship.

subject to periodic review in the manner set out in K.S.A. 59-2917a and 59-2923 and amendments thereto. For those wards who were admitted to a treatment facility prior to the effective date of this act, a hearing as set forth herein shall be held at the next annual review required by K.S.A. 59-3029 and amendments thereto, or within 30 days after such date, whichever is later

0521 (e) This section shall be part of and supplemental to the act
0522 for obtaining a guardian or conservator, or both.

0523 Sec. 38. K.S.A. 75-5209 is hereby amended to read as fol-
0524 lows: 75-5209. The secretary of corrections may arrange for the
0525 transfer of an inmate for observation and diagnosis or treatment
0526 to other appropriate state institutions with the prior consent of
0527 the administrators of the agencies. The administrator of such
0528 institution shall accept the transfer of such inmate unless such
0529 administrator shows that no facilities are available for the ac-
0530 commodation of such inmate and shall have access to any Kansas
0531 reception and diagnostic center case study, diagnosis or report
0532 relating to an inmate transferred to such institution. While the
0533 inmate is in another institution his or her *the inmate's* sentence

0534 shall continue to run. When, in the judgment of the administrator
0535 of the institution to which an inmate has been transferred, he or
0536 she ~~the inmate~~ has recovered from the condition which occa-
0537 sioned the transfer, the administrator shall provide for his or her
0538 ~~the inmate's~~ return to the secretary, unless his or her ~~the in-~~
0539 ~~mate's~~ sentence has expired.

0540 The costs of transfer as well as the transportation of the inmate
0541 to the appropriate state institution shall be borne by the correc-
0542 tional institution from which such inmate is transferred. No
0543 inmate shall receive care or treatment at the state security hos-
0544 pital after expiration of his or her ~~the inmate's~~ sentence: ~~Pro-~~
0545 ~~vided, however, That~~. If the inmate shall be in need of continued
0546 care and treatment for mental illness at the expiration of his or
0547 her ~~the inmate's~~ term of confinement, then an application to
0548 obtain such care or treatment for said person ~~the inmate~~ shall be
0549 filed in conformance with the provisions of the act for obtaining
0550 care or treatment of a mentally ill person pursuant to the treat-
0551 ment act for mentally ill persons.

0552 Any inmate transferred to the state security hospital pursuant
0553 to this section may correspond freely, without censorship, with
0554 any person, except that any such incoming correspondence or
0555 parcels may be opened and examined for the purpose of inter-
0556 cepting any items which the superintendent of such institution
0557 has declared to be contraband.

0558 Sec. 39. K.S.A. 77-201 is hereby amended to read as follows:
0559 77-201. In the construction of the statutes of this state the
0560 following rules shall be observed, unless the construction would
0561 be inconsistent with the manifest intent of the legislature or
0562 repugnant to the context of the statute:

0563 *First.* The repeal of a statute does not revive a statute pre-
0564 viously repealed, nor does the repeal affect any right which
0565 accrued, any duty imposed, any penalty incurred or any pro-
0566 ceeding commenced, under or by virtue of the statute repealed.
0567 The provisions of any statute, so far as they are the same as those
0568 of any prior statute, shall be construed as a continuation of the
0569 prior provisions and not as a new enactment.

0570 *Second.* Words and phrases shall be construed according to the

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0571 context and the approved usage of the language, but technical
0572 words and phrases, and other words and phrases that have
0573 acquired a peculiar and appropriate meaning in law, shall be
0574 construed according to their peculiar and appropriate meanings.

0575 *Third.* Words importing the singular number only may be
0576 extended to several persons or things, and words importing the
0577 plural number only may be applied to one person or thing.
0578 Words importing the masculine gender only may be extended to
0579 females.

0580 *Fourth.* Words giving a joint authority to three or more public
0581 officers or other persons shall be construed as given that author-
0582 ity to a majority of them, unless it is otherwise expressed in the
0583 act giving the authority.

0584 *Fifth.* "Highway" and "road" include public bridges and may
0585 be construed to be equivalent to "county way," "county road,"
0586 "common road," "state road" and "territorial road."

0587 *Sixth.* "Incompetent person" includes disabled person as that
0588 term is defined in K.S.A. 59-3002 and amendments thereto.

0589 *Seventh.* "Issue," as applied to the descent of estates, includes
0590 all the lawful lineal descendants of the ancestor.

0591 *Eighth.* "Land," "real estate" and "real property" include
0592 lands, tenements and hereditaments, and all rights thereto and
0593 interest therein, equitable as well as legal.

0594 *Ninth.* "Personal property" includes money, goods, chattels,
0595 evidences of debt and things in action.

0596 *Tenth.* "Property" includes personal and real property.

0597 *Eleventh.* "Month" means a calendar month, unless otherwise
0598 expressed. "Year" alone, and also the abbreviation "A.D.," is
0599 equivalent to the expression "year of our Lord."

0600 *Twelfth.* "Oath" includes an affirmation in all cases where an
0601 affirmation may be substituted for an oath and in similar cases
0602 "swear" includes affirm.

0603 *Thirteenth.* "Person" may be extended to bodies politic and
0604 corporate.

5 *Fourteenth.* If the seal of a court or public office or officer is
0606 required by law to be affixed to any paper, "seal" includes an
0607 impression of the seal upon the paper alone, as well as upon wax

0608 or a wafer affixed to the paper. "Seal" also includes both a rubber
0609 stamp seal used with permanent ink and the word "seal" printed
0610 on court documents produced by computer systems, so that the
0611 seal may be legibly reproduced by photographic process.

0612 *Fifteenth.* "State," when applied to the different parts of the
0613 United States, includes the District of Columbia and the terri-
0614 tories. "United States" may include that district and those terri-
0615 tories.

0616 *Sixteenth.* "Town" may mean a civil township, unless a dif-
0617 ferent meaning is plainly intended.

0618 *Seventeenth.* "Will" includes codicils.

0619 *Eighteenth.* "Written" and "in writing" may include printing,
0620 engraving, lithography and any other mode of representing
0621 words and letters, excepting those cases where the written sig-
0622 nature or the mark of any person is required by law.

0623 *Nineteenth.* "Sheriff" may be extended to any person per-
0624 forming the duties of the sheriff, either generally or in special
0625 cases.

0626 *Twentieth.* "Deed" is applied to an instrument conveying
0627 lands but does not imply a sealed instrument. "Bond" and
0628 "indenture" do not necessarily imply a seal but in other respects
0629 mean the same kind of instruments as above. "Undertaking"
0630 means a promise or security in any form where required by law.

0631 *Twenty-first.* "Executor" includes an administrator where the
0632 subject-matter applies to an administrator.

0633 *Twenty-second.* Roman numerals and Arabic figures are to be
0634 taken as a part of the English language.

0635 *Twenty-third.* "Residence" means the place which is adopted
0636 by a person as the person's place of habitation and to which,
0637 whenever the person is absent, the person has the intention of
0638 returning. When a person eats at one place and sleeps at another,
0639 the place where the person sleeps shall be deemed the person's
0640 residence.

0641 *Twenty-fourth.* "Usual place of residence" and "usual place of
0642 abode," when applied to the service of any process or notice,
0643 means the place usually occupied by a person. If a person has no
0644 family, or does not have family with the person, the person's

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0645 office or place of business or, if the person has no place of
0646 business, the room or place where the person usually sleeps
0647 shall be construed to be the person's place of residence or abode.

0648 *Twenty-fifth.* "Householder" means a person who is 18 or
0649 more years of age and who owns or occupies a house as a place of
0650 residence and not as a boarder or lodger.

0651 *Twenty-sixth.* "General election" refers to the election re-
0652 quired to be held on the Tuesday following the first Monday in
0653 November of each even-numbered year.

0654 *Twenty-seventh.* "Under legal disability" includes persons
0655 who are within the period of minority, incapacitated or impris-
0656 oned.

0657 *Twenty-eighth.* When a person is required to be disinterested
0658 or indifferent in acting on any question or matter affecting other
0659 parties, relationship within the degree of second cousin, inclu-
0660 sive, shall disqualify the person from acting, except by consent of
0661 parties.

0662 *Twenty-ninth.* "Head of a family" shall include any person
0663 who has charge of children, relatives or others living with the
0664 person.

0665 *Thirtieth.* "Mentally ill person" means any person who is
0666 mentally impaired to the extent that the person is in need of
0667 treatment and who is dangerous to self or others and:

0668 (a) Who lacks sufficient understanding or capacity to make
0669 responsible decisions with respect to the person's need for
0670 treatment; or

0671 (b) who refuses to seek treatment. Proof of a person's failure
0672 to meet the person's basic physical needs, to the extent that the
0673 failure threatens the person's life, shall be considered proof that
0674 the person is dangerous to self, except that no person who is
0675 being treated by prayer in the practice of the religion of any
0676 church which teaches reliance on spiritual means alone through
0677 prayer for healing shall be determined to be a mentally ill person
0678 unless substantial evidence is produced upon which the court
0679 finds that the person is dangerous to self or others a mentally ill
0680 person as defined in K.S.A. 59-2902 and amendments thereto.

0681 *Thirty-first.* "Incapacitated person" means disabled person as

0682 that term is defined in K.S.A. 59-3002 and amendments thereto.

0683 *Thirty-second.* "Guardian" means an individual or a nonprofit
0684 corporation certified in accordance with K.S.A. 59-3037 which
0685 has been appointed by a court to act on behalf of a ward and
0686 possessed of some or all of the powers and duties set out in
0687 K.S.A. 59-3018 and amendments thereto. "Guardian" does not
0688 mean natural guardian unless specified.

0689 *Thirty-third.* "Natural guardian" means both the father and
0690 mother of a legitimate minor or the mother of an illegitimate
0691 minor, unless both such parents or parent have been found to be
0692 a disabled person or have had their parental rights severed by a
0693 court of competent jurisdiction. If either parent of a legitimate
0694 minor dies, is found to be a disabled person or has had parental
0695 rights severed by a court of competent jurisdiction, the other
0696 shall be the natural guardian.

0697 *Thirty-fourth.* "Conservator" means an individual or corpora-
0698 tion appointed by the court to act on behalf of a conservatee and
0699 possessed of some or all of the powers and duties set out in
0700 K.S.A. 59-3019 and amendments thereto.

0701 *Thirty-fifth.* "Minor" means any person defined by K.S.A.
0702 38-101 and amendments thereto as being within the period of
0703 minority.

0704 *Thirty-sixth.* "Proposed ward" means a person for whom an
0705 application for the appointment of a guardian pursuant to K.S.A.
0706 59-3006 and amendments thereto has been filed.

0707 *Thirty-seventh.* "Proposed conservatee" means a person for
0708 whom a petition for the appointment of a conservator pursuant to
0709 K.S.A. 59-3006 and amendments thereto has been filed.

0710 *Thirty-eighth.* "Ward" means a person who has a guardian.

0711 *Thirty-ninth.* "Conservatee" means a person who has a con-
0712 servator.

0713 Sec. 40. K.S.A. 59-212, 59-2212, 59-2901, 59-2902, 59-2904,
0714 59-2906 through 59-2912, 59-2914, 59-2914a, 59-2915, 59-2916,
0715 59-2916a, 59-2917, 59-2917a, 59-2918, 59-2919, 59-2921, 59-2922,
0716 59-2923, 59-2924, 59-2926, 59-2928, 59-2929, 59-2931, 59-2940,
0717 59-2942, 59-3002, 59-3018, 75-5209 and 77-201 and K.S.A. 1984
0718 Supp. 22-3428, 22-3428a, 28-170, 38-1513 and 38-1614 are

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0719 hereby repealed.

0720 Sec. 41. This act shall take effect and be in force from and
0721 after its publication in the statute book.

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