

Approved 2-18-86
Date

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

The meeting was called to order by SENATOR ROY M. EHRLICH at
Chairperson

10:00 a.m. ~~pm~~ on February 13, 1986 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Norm Furse, Bill Wolff, Clarene Wilms

Conferees appearing before the committee:

Bill Rein, Attorney, SRS Mental Health Services

Dr. Gerald T. Hannah, Commissioner of Mental Health and Retardation Services

Others attending: See attached list

Senator Hayden introduced Melissa Ohls, Legislative Assistant from Emporia.

Discussion and final action followed on SB-549, SB-542, SB-501 and HCR-5031.

SB-549 An Act concerning communications between a patient and psychotherapist; providing that certain communications are privileged and confidential;

The amended SB-549 was presented for discussion by Senator Walker. Attachment I A conceptual motion was made by Senator Hayden with a second by Senator Walker. After some discussion Senator Hayden requested that his motion be withdrawn and Senator Walker withdrew his second. Bill Rein testified on the striking of Section 5 stating that there was an emergency override if the patient refused. Mr. Rein stated that the Judiciary Committee struck lines 102-106 (6) on page 3 as they felt it might not be proper, a violation of patients rights. Senator Francisco expressed concern over whether or not the court would have access. Dr. Hannah stated that patients are encouraged upon admission to give consent to release the information if needed to work with referral agencies; secondly, in an emergency the law allows override and ability to furnish that information. The new Section 3 (6) was added to enable warnings to be given if a certain person was threatened. Senator Salisbury moved the amendments to the bill be accepted. Senator Mulich seconded the motion and the motion carried. Senator Salisbury moved that SB-549 be passed as amended. Senator Mulich seconded the motion and the motion carried.

SB-542 An Act concerning emergency medical services; relating to the demonstration program in manual cardiac defibrillation;

Bill Wolff, Staff, questioned whether or not the committee could extend by legislation the rules and regulations in effect as the rules and regulations are temporary. It was suggested that the bill be amended to be effective upon publication in the Kansas Register. Senator Anderson moved that the bill be amended to be effective on publication in the Kansas Register with a second by Senator Francisco. Motion carried. Senator Francisco made the motion that SB-542 as amended be passed out favorable. Senator Kerr seconded the motion and the motion carried.

SB-501 An Act concerning the uniform controlled substances act; relating to the dispensing of schedule I substances;

Senator Morris moved that SB-501 be amended to be effective upon publication in the Kansas Register. Senator Anderson seconded the motion and the motion carried. Senator Morris moved that SB-501 as amended be passed out favorable. Senator Anderson seconded the motion and the motion carried.

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE,
room 526-S, Statehouse, at 10:00 a.m./~~pm~~ on February 13, 19 86

HCR-5013 A Concurrent Resolution directing the secretary of health and environment to develop programs related to fetal alcohol syndrome and fetal alcohol effects.

Senator Anderson made the motion to adopt HCR-5013 with a second by Senator Salisbury. Discussion was held concerning the need and fiscal cost of this resolution since it appeared it was already being implemented. It was suggested that possibly the legislature should require liquor and grocery stores to post warning signs. The question was called and the motion carried.

The meeting adjourned at 10:32 a.m.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE
DATE 2-13-86

(PLEASE PRINT)
NAME AND ADDRESS

Bill Geir
Brynnne Johnson
Madine Hansen
Melissa Ohls
Mary Wehheim
Beth Garrison
Dorothy Conway
Katherine Clark CRWA
Marilyn Bradt
Barbara Peimert
Kathryn Timm
Dolly Brown
Margaret Hansen
Nardene Austin
Cecilia Hansen
John Peterson
Tom Bell

ORGANIZATION

SRS
LWV
League Women Voters
Legislative Intern
League of Women Voters
LWV - Wichita

intern
KINH
Planned Parenthood
senator Kam's intern
CWA Local 6401
CWA - Local 6401
CWA - Local - 6401
MADS/SRS
K Assn Post Psychologists
KHA

SENATE BILL No. 549

By Senators Karr, Anderson, Daniels, Ehrlich, Gannon, Hayden,
Johnston, F. Kerr, Martin, Norvell, Parrish and Winter

2-3

2-13-86

Attachment I

0018 AN ACT concerning communications between a patient and *staff of a treatment facility*
0019 ~~psychotherapist~~; providing that certain communications are
0020 privileged and confidential; creating exceptions, ~~_____~~ *and repealing KSA 59-2931 and 76-12611*

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

0022 Section I. As used in this act:

0023 (a) "Patient" means a person who consults or is examined or
0024 interviewed by a ~~psychotherapist.~~

0025 (b) "~~Psychotherapist~~" means any employee of a treatment
0026 facility who receives a confidential communication from a pa-
0027 tient while engaged in the diagnosis or treatment of a mental,
0028 alcoholic, drug dependency or emotional condition, if such
0029 communication was not intended to be disclosed to third persons.
0030 ~~but does not include the following: Physicians, licensed social~~
0031 ~~workers and certified psychologists.~~

"Treatment personnel"

0032 (c) "Treatment facility" means a community mental health
0033 center, ~~state~~ psychiatric hospital and state institution for the
0034 mentally retarded.

"Ancillary personnel" means any employee of a
treatment facility who is not a treatment
personnel.

0035 (d) "Head of the treatment facility" means the administrative
0036 director ~~if the administrative director is a physician or, if the~~
0037 ~~administrative director is not a physician, the chief medical~~
0038 ~~officer or a physician designated by the chief medical officer.~~

of a treatment facility or designee.

0039 (e) "Physician" means a person licensed to practice medi-
0040 cine and surgery.

0041 (f) "Community mental health center" means a mental health
0042 clinic or community mental health center licensed under K.S.A.
0043 75-3307b and amendments thereto.

0044 (g) "~~State~~ psychiatric hospital" means Larned state hospital,
0045 Osawatomie state hospital, Rainbow mental health facility, and

0046 Topeka state hospital. and hospitals licensed under K.S.A. 75-3307b.

0047 (h) "State institution for the mentally retarded" means Nor-
0048 ton state hospital, Winfield state hospital and training center,
0049 Parsons state hospital and training center and the Kansas neuro-
0050 logical institute.

0051 Sec. 2. (a) A patient has a privilege to refuse to disclose, and
0052 to prevent any other person from disclosing, that the patient has
0053 been or is currently receiving treatment ^{or} and to disclose any
0054 confidential communications made for the purposes of diagnosis
0055 or treatment of the patient's mental, alcoholic, drug dependency
0056 or emotional condition, ~~between the patient's psychotherapist or~~
0057 ~~persons who are participating in the diagnosis or treatment.~~ The
0058 privilege extends to individual, family or group therapy under
0059 the direction of the psychotherapist and includes members of the
0060 patient's family. The privilege may be claimed by the patient, by
0061 the patient's guardian or conservator or by the personal repre-
0062 sentative of a deceased patient. The psychotherapist shall claim
0063 the privilege on behalf of the patient unless the patient has made
0064 a written waiver of the privilege and provided the psychothera-
0065 pist with a copy of such waiver or unless one of the exceptions
0066 provided by section 3 is applicable.

treatment personnel

treatment personnel

treatment personnel

0067 (b) Confidential communications shall extend to those per-
0068 sons present to further the interests of the patient in the consul-
0069 tation, examination or interview; ~~persons reasonably necessary~~
0070 ~~for the transmission of the communication;~~ persons who are
0071 participating in the diagnosis and treatment under the direction
0072 of the psychotherapist, including members of the patient's fam-
0073 ily; and any other persons who the patient reasonably believes
0074 needs the communication to assist in the patient's diagnosis or
0075 treatment.

ancillary personnel

treatment personnel

0076 Sec. 3. (a) The privilege established by section 2 shall not
0077 extend to:

involuntarily

0078 (1) Any communication relevant to an issue in proceedings to
0079 hospitalize a patient for mental illness, alcoholism or drug de-
0080 pendency if the psychotherapist in the course of diagnosis or
0081 treatment has determined that the patient is in need of hospital-
0082 ization;

treatment personnel

0083 (2) an order for examination of the mental, alcoholic, drug
0084 dependency or emotional condition of the patient which is
0085 entered by a judge, with respect to the particular purpose for
0086 which the examination is ordered;

0087 (3) any proceeding in which the patient relies upon any of
0088 the aforementioned conditions as an element of the patient's
0089 claim or defense, or, after the patient's death, in any proceeding
0090 in which any party relies upon any of the patient's conditions as
0091 an element of a claim or defense;

0092 (4) any communication which forms the substance of infor-
0093 mation which the ~~psychotherapist~~ or the patient is required to
0094 report to a public official or to be recorded in a public office,
0095 unless the statute requiring the report or record specifically
0096 provides that the information shall not be disclosed;

by law

treatment personnel

0097 (5) any information necessary for the emergency treatment of
0098 a patient or former patient if the head of the treatment facility at
0099 which the patient is being treated or was treated states in writing
0100 the reasons for disclosure of the communication and makes such
0101 statement a part of the medical record of the patient;

(new b)

~~(new b)~~

0102 ~~(6) any information from a state psychiatric hospital or state~~
0103 ~~institution for the mentally retarded to appropriate administra-~~
0104 ~~tive or professional staff of any community mental health center~~
0105 ~~for purposes of promoting continuity of care in the community.~~
0106 ~~following discharge or conditional release of the patient;~~

Information relevant to protect a person who has been threatened with substantial physical harm by a patient during the course of treatment, when such person has been specifically identified by the patient, the treatment personnel believes there is substantial likelihood that the patient will act on such threat in the reasonably foreseeable future, and the head of the treatment facility has concluded that notification should be given. The patient shall be notified that such information has been communicated.

0107 (7) any information from a state psychiatric hospital to ap-
0108 propriate administrative staff of the department of corrections
0109 whenever patients have been administratively transferred to a
0110 state psychiatric hospital pursuant to the provisions of K.S.A.
0111 75-5209 and amendments thereto;

0112 (8) any information to the patient or former patient, ~~or the~~
0113 ~~patient's next of kin,~~ except that the head of the treatment facility
0114 at which the patient is being treated or was treated may refuse to
0115 disclose portions of such records if the head of the treatment
0116 facility states in writing that such disclosure will be injurious to
0117 the welfare of the patient or former patient; or

0118 (9) any information to any state or national accreditation,
0119 certification or licensing authority, or scholarly investigator, but

0120 the head of the treatment facility shall require, before such
0121 disclosure is made, a pledge that the name of any patient or
0122 former patient shall not be disclosed to any person not otherwise
0123 authorized by law to receive such information.

treatment personnel

0124 (b) The ~~psychotherapist~~ shall not disclose any information
0125 subject to subsection (a)(3) unless a judge has entered an order
0126 finding that the patient has made such patient's condition an
0127 issue of the patient's claim or defense. The order shall indicate
0128 the parties to whom otherwise confidential information must be
0129 disclosed.

treatment ~~personnel~~

0130 Sec. 4. This act shall be interpreted to encourage ~~psycho-~~
0131 ~~therapy~~ in a confidential setting and the rules of discovery shall
0132 not take precedence over the provisions of this act.

treatment personnel or ancillary personnel

0133 Sec. ~~6~~ This act shall take effect and be in force from and
0134 after its publication in the statute book.

NEW Sec. 5. Any ~~psychotherapist~~ willfully violating
the patient's confidentiality as defined by this Act
shall be guilty of a Class C misdemeanor.