

Approved _____

Date

4/4/90

MINUTES OF THE SENATE COMMITTEE ON PUBLIC HEALTH AND WELFARE

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

8:20 a.m./~~pm~~ on March 29, 1990 in room 526S of the Capitol.

All members were present except:

Committee staff present:

Emalene Correll, Legislative Research
Norman Furse, Revisor's Office
Sandra Nash, Committee Secretary

Conferees appearing before the committee:

The Chairman called the Committee to order, calling its attention to H.B. 3022. Senator Burke asked if there was an amendment. Staff Furse explained what the amendment consisted of.

Senator Walker made a motion to pass H.B. 3022 out of Committee favorably. Senator Langworthy seconded the motion. The motion carried. Senator Ehrlich will carry the bill.

The Chairman called the Committee's attention to H.B. 2800. Staff Furse distributed a copy of a balloon which is a combination of a couple items. Basically, with one exception, the conferees didn't have any suggestions in regard to the bill with exception of the Department of Health and Environment and it's included. There are a couple items included which raised policy issues, just to point out what's in the bill and to raise the issue with you. They're not recommendations on the Staff's part, per se. And then a couple of the items in the balloon tighten up the language a bit from what the draft is. (Attachment 1)

Senator Anderson made a motion to adopt the language as presented by Staff Furse. Senator Langworthy seconded the motion. The motion carried.

The Chairman called the Committee's attention to H.B. 2586. Staff Furse distributed a copy of the bill on which he had noted all the requested changes and concerns of the conferees. He then reviewed each of the requested amendments and concerns. (Attachment 2)

The Committee adjourned at 8:57a.m. to reconvene at the end of the Session of Senate in room 526S.

SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3/29/90

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Bill Dean	O.P. Ks	John Peterson & Associates
John M. [unclear]		[unclear]
John & Howard Snyder		KS AMI
Jenni Roberts		KONA
Bori Class	Typha	KS Mental Health Assoc -
Richard Morrissey		KDHE
Mani See		SRS / MHRS
Al Nemes		SRS / MHRS
Jerry Larson		Ks. Alliance for the Mentally Ill
Kenn R Landis		CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Robert Harder		Mental Health Consortium
Gary Hulott		Governor's Office
[unclear]		[unclear]
Glenn [unclear]		Governor's Office
Johnnie [unclear] Land, Ks		Kans. MH Planning Council
J. [unclear]		K. Assoc. Nat. Psychologists
Patrick [unclear]		[unclear]
Anne Smith		Ks. Assoc. of Counties
[unclear]		[unclear]

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SENATE
PUBLIC HEALTH AND WELFARE COMMITTEE

DATE 3-29-90

(PLEASE PRINT)
NAME AND ADDRESS

ORGANIZATION

Robert B. ... ^{of ...}

...

J. ...

KDHE

Charles Konigsberg

KDHE

Substitute for HOUSE BILL No. 2800

By Committee on Public Health and Welfare

3-5

9 AN ACT relating to abuse, neglect or exploitation of certain residents;
10 amending K.S.A. 39-1402, 39-1403, 39-1404, 39-1405, 39-1406,
11 39-1408 and 39-1409 and K.S.A. 1989 Supp. 39-1401 and repealing
12 the existing sections.

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

14 Section 1. K.S.A. 1989 Supp. 39-1401 is hereby amended to read
15 as follows: 39-1401. As used in this act:

16 (a) "Resident" means:

17 (1) Any resident, as defined by K.S.A. 39-923 and amendments
18 thereto; or

19 (2) any client cared for in an adult family home; or

20 (3) any individual kept, cared for, treated, boarded or otherwise
21 accommodated in a medical care facility, as defined by K.S.A. 65-
22 425 and amendments thereto, which is operated by the state
23 or federal government; or

24 (4) any individual with mental retardation or a developmental
25 disability receiving services through a community mental retardation
26 facility or residential facility licensed under K.S.A. 75-3307b and
27 amendments thereto.

28 (b) "Adult care home" has the meaning ascribed thereto in K.S.A.
29 39-923 and amendments thereto.

30 (c) "Adult family home" has the meaning ascribed thereto in
31 K.S.A. 39-1501 and amendments thereto.

32 (d) "In need of protective services" means that a resident is
33 unable to perform or obtain services which are necessary to maintain
34 physical and or mental health, or both.

35 (e) "Services which are necessary to maintain physical and mental
36 health" include, but are not limited to, the provision of medical care
37 for physical and mental health needs, the relocation of a resident to
38 a facility or institution able to offer such care, assistance in personal
39 hygiene, food, clothing, adequately heated and ventilated shelter,
40 protection from health and safety hazards, protection from maltreat-
41 ment the result of which includes, but is not limited to, malnutrition,
42 deprivation of necessities or physical punishment and transportation
43 necessary to secure any of the above stated needs, except that this

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Attachment 1
3/29/90

term shall not include taking such person into custody without consent, except as provided in this act.

(f) "Protective services" means services provided by the state or other governmental agency or any private organizations or individuals which are necessary to prevent abuse or neglect or exploitation. Such protective services shall include, but not be limited to, evaluation of the need for services, assistance in obtaining appropriate social services and assistance in securing medical and legal services.

(g) "Abuse" means neglect, willful infliction of physical or mental injury or willful deprivation by a caretaker of services which are necessary to maintain physical and mental health.

(h) "Neglect" means the failure of a caretaker to maintain reasonable care and treatment to such an extent that the resident's health or emotional well-being is injured.

(i) "Caretaker" means a person or institution who has assumed the responsibility for the care of the resident voluntarily, by contract or by order of a court of competent jurisdiction.

(j) "Exploitation" means taking unfair advantage of an adult's physical or financial resources for another individual's personal or financial advantage by the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense by a caretaker or another person.

(k) "Medical care facility" means a facility licensed under K.S.A. 65-425 et seq. and amendments thereto but shall not include, for purposes of this act, a state psychiatric hospital or state institution for the mentally retarded, including Larned state hospital, Osawatimie state hospital, Rainbow mental health facility, Topeka state hospital, Kansas neurological institute, Parsons state hospital and training center and Winfield state hospital and training center.

No person shall be considered to be abused or neglected or exploited or in need of protective services for the sole reason that such person relies upon spiritual means through prayer alone for treatment in accordance with the tenets and practices of a recognized church or religious denomination in lieu of medical treatment.

Sec. 2. K.S.A. 39-1402 is hereby amended to read as follows: 39-1402. (a) Any person who is licensed to practice any branch of the healing arts, a licensed psychologist, the a chief administrative officer of a medical care facility, an adult care home administrator, a licensed social worker, a licensed professional nurse and or a licensed practical nurse, who has reasonable cause to believe that a resident is being or has been abused or neglected or exploited, or is in a condition which is the result of such abuse or neglect or exploitation or is in need of protective services, shall report im-

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mediately such information or cause a report of such information to be made in any reasonable manner to the department of health and environment with respect to residents defined under (a)(1) and (a)(3) of K.S.A. 39-1401 and amendments thereto and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are required by this subsection to be made to the other department shall be referred by the department to which the report is made to the appropriate department for that report, and any such report shall constitute compliance with this subsection. Reports shall be made during the normal working week days and hours of operation of such departments. Reports shall be made to law enforcement agencies during the time the departments are not open for business. Law enforcement agencies shall submit the report and appropriate information to the appropriate department on the first working day that such department is open for business. A report made pursuant to K.S.A. 65-4923 or 65-4924 and amendments thereto shall be deemed a report under this section.

(b) The report made pursuant to subsection (a) shall contain the name and address of the person making the report and of the caretaker caring for the resident, the name and address of the involved resident, information regarding the nature and extent of the abuse, neglect or exploitation, the name of the next of kin of the resident, if known, and any other information which the person making the report believes might be helpful in an investigation of the case and the protection of the resident.

(c) Any other person having reasonable cause to suspect or believe that a resident is being or has been abused or, neglected or exploited, or is in a condition which is the result of such abuse or, neglect or exploitation or is in need of protective services may report such information to the department of health and environment with respect to residents defined under (a)(1) and (a)(3) of K.S.A. 39-1401 and amendments thereto and to the department of social and rehabilitation services with respect to all other residents. Reports made to one department which are to be made to the other department under this section shall be referred by the department to which the report is made to the appropriate department for that report.

(d) Notice of the requirements of this act and the department to which a report is to be made under this act shall be posted in a conspicuous place in every adult care home and, adult family home and medical care facility in this state.

(e) Any person required to report information or cause a report of information to be made under subsection (a) who knowingly fails

to make such report or cause such report to be made shall be guilty of a class B misdemeanor.

Sec. 3. K.S.A. 39-1403 is hereby amended to read as follows: 39-1403. (a) Anyone participating in the making of any report pursuant to this act, or in any follow-up activity to or investigation of such report or any other report of abuse or neglect or exploitation of an adult or who testifies in any administrative or judicial proceeding arising from such report shall not be subject to any civil or criminal liability on account of such report, investigation or testimony, unless such person acted in bad faith or with malicious purpose.

(b) No employer shall terminate the employment of, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that such employee made or caused to be made a report under this act.

Sec. 4. K.S.A. 39-1404 is hereby amended to read as follows: 39-1404. (a) The department of social and rehabilitation services or the department of health and environment upon receiving a report that a resident is being, or has been, abused or neglected or exploited, or is in a condition which is the result of such abuse or neglect or exploitation or is in need of protective services shall, within 48 24 hours of receiving such report, shall initiate an investigation, including a personal visit with the resident and, within two weeks of receiving such report, shall initiate a thorough complete the investigation and evaluation to determine the situation relative to the condition of the resident and what action and services, if any, are required to determine if the resident is being or has been abused, neglected or exploited or is in a condition which is a result of such abuse, neglect or exploitation. The evaluation investigation shall include, but not be limited to, a visit to the named resident and consultation with those individuals having knowledge of the facts of the particular case. Upon completion of the evaluation investigation of each case, written findings shall be prepared which shall include a finding of whether there is or has been abuse or neglect or exploitation, recommended action and a determination of whether protective services are needed. If it appears that a crime has occurred, the appropriate law enforcement agency shall be notified by the department investigating the report.

24-48 hours?

(b) The secretary of social and rehabilitation services shall maintain a statewide register of the reports received and investigated by the department of social and rehabilitation services, the findings, evaluations and the actions recommended. The register shall be available for inspection by personnel of the department of social and

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rehabilitation services. The secretary of social and rehabilitation services shall forward a copy of any report of abuse or, neglect or exploitation of a resident investigated by the department of social and rehabilitation services to the secretary of health and environment and, in the case of a report of abuse or, neglect or exploitation of a resident of an adult care home or an adult family home, to the secretary of aging.

(c) ~~Neither~~ The report received by the department of social and rehabilitation services ~~nor~~ and the written evaluation findings, evaluations and actions recommended shall not be deemed a public record or be subject to the provisions of K.S.A. 45-201 to 45-203, inclusive, and any amendments thereto the open records act. Except as otherwise provided in this section, the name of the person making the original report to the department of social and rehabilitation services or any person mentioned in such report shall not be disclosed unless the person making the original report specifically requests or agrees in writing to such disclosure or unless a judicial proceeding results therefrom. Except as otherwise provided in this section, no information contained in the statewide register shall be made available to the public in such a manner as to identify individuals.

(d) The secretary of social and rehabilitation services shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The appropriate state regulatory authority may consider the finding in any disciplinary action taken with respect to the provider of services under the jurisdiction of such authority.

(e) The department which investigates the report shall inform the complainant, upon request of the complainant, that an investigation has been made and, if the allegations of abuse, neglect or exploitation have been substantiated, that corrective measures will be taken.

Sec. 5. K.S.A. 39-1405 is hereby amended to read as follows: 39-1405. (a) ~~If the secretary of social and rehabilitation services or the secretary of health and environment finds~~ that a resident is in need of protective services, the secretary of social and rehabilitation services shall provide the necessary protective services, if a resident consents. If a resident fails to consent and the secretary of social and rehabilitation services has reason to believe that such a resident lacks capacity to consent, the secretary of social and rehabilitation services shall determine pursuant to K.S.A. 39-1408 and amendments

SRS forward copy of report of abuse, neglect or exploitation at facility exempt under subsection (k) of K.S.A. 39-1401 and amendments thereto to KDHE?

The secretary of health and environment shall forward to the secretary of social and rehabilitation services any finding that a resident may be in need of protective services. determines

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1 *thereto* whether a petition for appointment of a guardian or con-
2 servator, or both, should be filed.

3 (b) If the caretaker of a resident who has consented to the receipt
4 of reasonable and necessary protective services refuses to allow the
5 provision of such services to such resident, the secretary of social
6 and rehabilitation services may seek to obtain an injunction enjoining
7 the caretaker from interfering with the provision of protective serv-
8 ices to the resident. The petition in such action shall allege specific
9 facts sufficient to show that the resident is in need of protective
10 services and consents to their provision and that the caretaker refuses
11 to allow the provision of such services. If the judge finds that the
12 resident is in need of protective services and has been prevented
13 by the caretaker from receiving such services, the judge shall issue
14 an order enjoining the caretaker from interfering with the provision
15 of protective services to the resident.

16 Sec. 6. K.S.A. 39-1406 is hereby amended to read as follows:
17 39-1406. Any person, department or agency authorized to carry out
18 the duties enumerated in this act and the ~~nursing home~~ ombudsman
19 shall have access to all relevant records. The authority of the sec-
20 retary of social and rehabilitation services *and the secretary of health*
21 *and environment* under this act shall include, but not be limited to,
22 the right to initiate or otherwise take those actions necessary to
23 assure the health, safety and welfare of any resident, subject to any
24 specific requirement for individual consent of the resident.

[long-term care

25 Sec. 7. K.S.A. 39-1408 is hereby amended to read as follows:
26 39-1408. (a) If the secretary of social and rehabilitation services finds
27 that a resident is being or has been abused ~~or~~, neglected *or exploited*
28 or is in a condition which is the result of such abuse ~~or~~, neglect *or*
29 *exploitation* and lacks capacity to consent to reasonable and necessary
30 protective services, the secretary may petition the district court for
31 appointment of a guardian or conservator, or both, for the resident
32 pursuant to the provisions of the act for obtaining a guardian or
33 conservator, or both, in order to obtain such consent.

34 (b) In any proceeding in district court pursuant to provisions of
35 this act, the district court shall appoint an attorney to represent the
36 resident if the resident is without other legal representation.

37 Sec. 8. K.S.A. 39-1409 is hereby amended to read as follows:
38 39-1409. In performing the duties set forth in this act, the secretary
39 of social and rehabilitation services *or the secretary of health and*
40 *environment* may request the assistance of the staffs and resources
41 of all appropriate state departments, agencies and commissions and
42 local health departments and may utilize any other public or private
43 agencies, groups ~~or~~ individuals who are appropriate and who

may be available agency, group or individual who is appropriate and who may be available to assist such department in the investigation and determination of whether a resident is being, or has been, abused, neglected or exploited or is in a condition which is a result of such abuse, neglect or exploitation.

New Sec. 9. (a) The secretary of health and environment shall maintain a register of the reports received and investigated by the department of health and environment under K.S.A. 39-1402 and 39-1403, and amendments to such sections, and the findings, evaluations and actions recommended by the department with respect to such reports. The findings, evaluations and actions shall be subject to such notice and appeals procedures as may be adopted by rules and regulations of the secretary of health and environment, which rules and regulations shall be consistent with any requirements of federal law relating thereto. The register shall be available for inspection by personnel of the department of health and environment as specified by the secretary of health and environment and to such other persons as may be designated by the secretary of health and environment by rules and regulations, which rules and regulations shall be consistent with any requirement of federal law relating thereto.

state or

required by federal law and

The secretary of health and environment shall forward a copy of any report of abuse, neglect or exploitation of a resident of an adult care home to the secretary of aging.

(b) The secretary of health and environment shall forward any finding of abuse, neglect or exploitation alleged to be committed by a provider of services licensed, registered or otherwise authorized to provide services in this state to the appropriate state authority which regulates such provider. The appropriate state regulatory authority may consider the finding in any disciplinary action taken with respect to the provider of services under the jurisdiction of such authority. The secretary of health and environment may consider the finding of abuse, neglect or exploitation in any disciplinary action taken with respect to any licensed provider of services under the jurisdiction of the secretary. If the investigation of the department of health and environment finds that the resident is in need of protective services, that finding and all information relating to that finding shall be forwarded to the secretary of health and environment to the secretary of social and rehabilitation services.

licensing

adult care home or medical care facility

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(c) Except as otherwise provided in this section, the report received by the department of health and environment and the writer findings, evaluations and actions recommended shall be confidential and shall not be subject to the open records act. Except as otherwise provided in this section, the name of the person making the original report to the department of health and environment or any person mentioned in such report shall not be disclosed unless such person

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2 specifically requests or agrees in writing to such disclosure or unless
3 a judicial or administrative proceeding results therefrom. In the event
4 that an administrative or judicial action arises, no use of the infor-
5 mation shall be made until the judge or presiding officer makes a
6 specific finding, in writing, after a hearing, that under all the cir-
7 cumstances the need for the information outweighs the need for
8 confidentiality. Except as otherwise provided in this section, no in-
9 formation contained in the register shall be made available to the
public in such a manner as to identify individuals.

10 ~~[(d) The department which investigates the report shall inform~~
11 ~~the complainant, upon request of the complainant, that an investi-~~
12 ~~gation has been made and, if the allegations of abuse, neglect or~~
13 ~~exploitation have been substantiated, that corrective measures will~~
14 ~~be taken.]~~

15 Sec. 10. K.S.A. 39-1402, 39-1403, 39-1404, 39-1405, 39-1406, 39-
16 1408 and 39-1409 and K.S.A. 1989 Supp. 39-1401 are hereby
17 repealed.

18 Sec. 11. This act shall take effect and be in force from and after
19 its publication in the statute book.

8-1

Substitute for HOUSE BILL No. 2586

By Committee on Appropriations

3-7

10 AN ACT concerning community mental health services; providing
11 for assessments of need and the adoption of plans to provide such
12 services; prescribing certain powers, duties and functions in re-
13 lation thereto; establishing the governor's mental health services
14 planning council; amending K.S.A. 19-4002, 19-4002a, 19-4002b,
15 59-2905, 65-211 and 65-213 and K.S.A. 1989 Supp. 59-2901, 59-
16 2902, 59-2907, 59-2908, 59-2909, 59-2912, 59-2914, 59-2914a, 59-
17 2916, 59-2917, 59-2918, 59-2918a, 59-2924, 65-4434 and 65-5603
18 and repealing the existing sections; also repealing K.S.A. 75-3302d
19 and 75-3302e.

20
21 *Be it enacted by the Legislature of the State of Kansas:*

22 New Section 1. Sections 1 through 11 and amendments thereto
23 shall be known and may be cited as the mental health reform act.

24 New Sec. 2. As used in sections 1 through 11 and amendments
25 thereto:

26 (a) "Targeted population" means the population group designated
27 by rules and regulations of the secretary as most in need of mental
28 health services which are funded, in whole or in part, by state or
29 other public funding sources, which group shall include adults with
30 severe and persistent mental illness, severely emotionally disturbed
31 children and adolescents, and other individuals at risk of requiring
32 institutional care.

33 (b) "Community based mental health services" includes, but is
34 not limited to, evaluation and diagnosis, case management services,
35 mental health inpatient and outpatient services, prescription and
36 management of psychotropic medication, prevention, education, con-
37 sultation, treatment and rehabilitation services, twenty-four-hour
38 emergency services, and any facilities required therefor, which are
39 provided within one or more local communities in order to provide
40 a continuum of care and support services to enable mentally ill
41 persons, including targeted population members, to function outside
42 of inpatient institutions to the extent of their capabilities. Community
43 based mental health services also include assistance in securing em-

SPX/W
Attachment 2
3/29/90

1 Harvey, Jackson, Jewell, Lincoln, Lyon, Marion, Marshall, Mc-
2 Pherson, Mitchell, Morris, Nemaha, Osage, Ottawa, Pottawatomie,
3 Republic, Riley, Saline, Sedgwick, Shawnee, Wabaunsee and
4 Washington.

5 (k) "Larned state hospital catchment area" means the area com-
6 posed of the following counties: Barber, Barton, Cheyenne, Clark,
7 Comanche, Decatur, Edwards, Ellis, Finney, Ford, Gove, Graham,
8 Grant, Gray, Greeley, Hamilton, Harper, Haskell, Hodgeman,
9 Kearny, Kingman, Kiowa, Lane, Logan, Meade, Morton, Ness, Nor-
10 ton, Osborne, Pawnee, Phillips, Pratt, Rawlins, Reno, Rice, Rooks,
11 Rush, Russell, Scott, Seward, Sheridan, Sherman, Smith, Stafford,
12 Stanton, Stevens, Sumner, Thomas, Trego, Wallace and Wichita.

13 (l) "Catchment area" means the Osawatomie state hospital catch-
14 ment area, the Topeka state hospital catchment area or the Larned
15 state hospital catchment area.

16 New Sec. 3. In addition to powers and duties otherwise provided
17 by law, the secretary shall have the following powers and duties:

18 (a) To function as the sole state agency to develop a compre-
19 hensive plan to meet the needs of persons who have mental illness;

20 (b) to evaluate and coordinate all programs, services and facilities
21 for persons who have mental illness presently provided by agencies
22 receiving state and federal funds and to make appropriate recom-
23 mendations regarding such services, programs and facilities to the
24 governor and the legislature;

25 (c) to evaluate all programs, services and facilities within the state
26 for persons who have mental illness and determine the extent to
27 which present public or private programs, services and facilities meet
28 the needs of such persons;

29 (d) to solicit, accept, hold and administer on behalf of the state
30 any grants, devises or bequests of money, securities or property to
31 the state of Kansas for services to persons who have mental illness
32 or purposes related thereto;

33 (e) to provide consultation and assistance to communities and
34 groups developing local and area services for persons who have
35 mental illness;

36 (f) to assist in the provision of services for persons who are men-
37 tally ill in local communities whenever possible, with primary control
38 and responsibility for the provision of services with mental health
39 centers, and to assure that such services are provided in the least
40 restrictive environment;

41 (g) to adopt rules and regulations for targeted population mem-
42 bers which provide that no person shall be inappropriately denied
43 necessary mental health services from any mental health center or

KPA, David Rodeheffer
Line 42, strike "inappropriately"

Rep. Douville

Modify subsection (g) so clearly within appropriations
therefor

2 providing services or other assistance to persons who have mental
3 illness consistent with relevant federal law, rules and regulations,
4 policies and procedures;

5 (r) to adopt rules and regulations to ensure the protection of
6 persons receiving mental health services, which shall include an
7 appeal procedure at the state and local levels;

8 (s) to establish procedures and systems to evaluate the results
9 and outcomes pursuant to section 10 and amendments thereto and
10 as otherwise provided for under this act; and

11 (t) to adopt such rules and regulations as may be necessary to
12 administer the provisions of sections 1 through 11 and amendments
13 thereof.

14 New Sec. 4. (a) On or before October 1, 1991, and in accordance
15 with rules and regulations adopted under section 3 and amendments
16 thereto, the secretary shall develop and adopt a state assessment of
17 needs and a plan to develop and operate a state system to provide
18 mental health services for persons who are residents of Kansas,
19 including all targeted population members designated by rules and
20 regulations adopted by the secretary. The plan for the state system
21 shall include coordinating and assisting in the provision of community
22 based mental health services in the service delivery areas of mental
23 health centers, including the services provided by state psychiatric
24 hospitals and the provision of state financial assistance. On or before
25 March 1, 1992, the secretary shall adopt a state plan for an integrated
26 system to coordinate and assist in the provision of community based
27 mental health services within Kansas. The assessment of needs and
28 plan for the state shall be reviewed and updated by the secretary
29 on an annual basis.

30 (b) The secretary shall assist and coordinate the development by
31 each mental health center of a community assessment of needs and
32 a plan for the community system to provide community based mental
33 health services for persons who reside in the service delivery area
34 of the mental health center, including all targeted population mem-
35 bers. The secretary shall review and approve, or return, with rec-
36 ommendations for revision and resubmittal, all such assessments of
37 needs and plans in accordance with criteria prescribed by rules and
38 regulations adopted under section 3 and amendments thereto. If
39 necessary services for a service delivery area cannot be provided by
40 the mental health center or in order to ensure that a continuum of
41 services will be provided in a service delivery area, the secretary
may require the provision of services for a service delivery area
through the combination of the operations of two or more mental
health centers or through contracts between two or more mental

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ACMHC and Rep. Downie

which are consistent with appropriations available for
the administration of such provisions

Deletion suggested by ACMHC.

health centers.

2 (c) Each mental health center shall annually review and update
3 such assessment of needs and plan for the service delivery area. If
4 the assessment of needs or the plan for the community system to
5 provide community based mental health services are not in com-
6 pliance with the criteria prescribed by rules and regulations under
7 section 3 and amendments thereto, the secretary shall withhold all
8 or part of the state financial assistance provided to the mental health
9 center.

10 (d) On or before October 1, 1991, each mental health center
11 shall submit an annual coordinated services plan addressing the serv-
12 ice needs of the targeted population to the secretary of social and
13 rehabilitation services for review and approval. The annual coordi-
14 nated services plan shall be developed according to the standards
15 established by rules and regulations adopted by the secretary of social
16 and rehabilitation services.

17 New Sec. 5. (a) There is hereby established the governor's men-
18 tal health services planning council. The council shall consist of 27
19 members appointed by the governor, of which not more than 13
20 members shall be state officers or employees or providers of mental
21 health services. The members shall be appointed by the governor
22 so that the composition of the council is in compliance with the
23 requirements of public law 99-660 and supplementary federal acts
24 and in accordance with the following:

- 25 (1) Eight members shall be representatives of state agencies;
26 (2) one member shall be a representative of private mental health
27 service providers;
28 (3) two members shall be members of governing boards of mental
29 health centers;
30 (4) two members shall be executive directors of mental health
31 centers; and
32 (5) fourteen members shall be members of the general public
33 and a majority of such members shall be consumers of mental health
34 services and family members of mentally ill persons.

35 (b) The governor shall designate the chairperson of the governor's
36 mental health services planning council. Each member of the gov-
37 ernor's mental health services planning council shall be appointed
38 for a term of four years. In the case of a vacancy on the council,
39 the governor shall appoint a successor for the unexpired term in the
40 same manner as the original appointment. The members of the
41 governor's mental health services planning council shall elect a vice-
chairperson.

(c) Members of the governor's mental health services planning

KMS

Add one member licensed to practice medicine and surgery to the council.

2-4

1 entering into a contract with the secretary under this section shall
2 provide court ordered evaluation and treatment services pursuant to
3 the treatment [act] for mentally ill persons and shall be known as
4 a participating mental health center.

5 (b) Subject to the provisions of this act and appropriations acts,
6 the secretary shall administer and disburse funds to each mental
7 health center for the coordination and provision of mental health
8 services for all persons who are residents of the service delivery area
9 of such mental health center.

10 (c) Subject to and in accordance with the provisions of this act
11 and appropriations acts, the secretary shall undertake, in cooperation
12 with participating mental health centers, the establishment and im-
13 plementation of the mental health reform phased program.

14 (1) Beginning with the Osawatomie state hospital catchment area,
15 the secretary shall enter into contracts with participating mental
16 health centers to reduce the rated bed capacity of the Osawatomie
17 state hospital as follows:

18 (A) One unit of 20 to 30 beds for adults shall be closed by June
19 30, 1991;

20 (B) by June 30, 1992, an additional unit or units comprising 20
21 to 30 beds shall be closed for adolescents; and

22 (C) by June 30, 1993, an additional unit or units comprising 20
23 to 30 adult beds shall be closed.

24 (2) For the Topeka state hospital catchment area, the secretary
25 shall enter into contracts with participating mental health centers to
26 reduce the rated bed capacity of Topeka state hospital as follows:

27 (A) One or more units comprising 20 to 30 adolescent beds shall
28 be closed by June 30, 1993;

29 (B) an additional unit or units comprising 20 to 30 adult beds
30 shall be closed by June 30, 1994; and

31 (C) an additional unit or units comprising 20 to 30 adult beds
32 shall be closed by June 30, 1995.

33 (3) For the Larned state hospital catchment area, the secretary
34 shall enter into contracts with participating mental health centers to
35 reduce the rated bed capacity of Larned state hospital by closing
36 one or more units comprising 20 to 30 adult beds in each of the
37 fiscal years ending June 30, 1994, June 30, 1995, and June 30, 1996.

38 (d) The staff of each state psychiatric hospital and the staff of the
39 participating mental health centers in the catchment area of the state
40 psychiatric hospital shall develop and implement admission and dis-
41 charge criteria for all patients. The provisions of this section shall
42 be incorporated into all contracts entered into between the secretary
43 and the participating mental health centers.

KPA
Delete proposed statutory bed closings.

2-6

1 organized pursuant to the provisions of K.S.A. 65-211 through 65-
2 215, and amendments thereto, and licensed in accordance with the
3 provisions of K.S.A. 75-3307b and amendments thereto.

4 (u) "Participating mental health center" means a mental health
5 center which has entered into a contract with the secretary of social
6 and rehabilitation services to provide court ordered evaluation and
7 treatment services pursuant to the treatment act for mentally ill
8 persons.

9 (v) "State psychiatric hospital" means Larned state hospital, Os-
10 awatomie state hospital, Rainbow mental health facility and Topeka
11 state hospital.

12 (w) "Qualified mental health professional" means (1) a physician
13 or psychologist who is employed by a participating mental health
14 center or who is providing services as a physician or psychologist,
15 respectively, under a contract with a participating mental health
16 center, or (2) a registered masters level psychologist or a licensed
17 specialist clinical social worker or licensed master social worker who
18 is employed by a participating mental health center and who is acting
19 under the supervision of a physician.

20 (x) "Registered masters level psychologist" means a person reg-
21 istered as a registered masters level psychologist by the behavioral
22 sciences regulatory board under K.S.A. 1989 Supp. 74-5361 through
23 74-5373 and amendments thereto.

24 (y) "Licensed specialist clinical social worker" means a person
25 licensed in the clinical social work practice specialty by the behav-
26 ioral sciences regulatory board under K.S.A. 1989 Supp. 65-6301
27 through 65-6318 and amendments thereto.

28 (z) "Licensed master social worker" means a person licensed as
29 a master social worker by the behavioral sciences regulatory board
30 under K.S.A. 1989 Supp. 65-6301 through 65-6318 and amendments
31 thereto.

32 (aa) "Secretary" means the secretary of social and rehabilitation
33 services.

34 (bb) "Osawatomie state hospital catchment area" means the area
35 composed of the following counties: Allen, Anderson, Atchison,
36 Bourbon, Butler, Chautauqua, Cherokee, Cowley, Crawford, Elk,
37 Franklin, Jefferson, Johnson, Labette, Leavenworth, Linn, Miami,
38 Montgomery, Neosho, Wilson, Woodson and Wyandotte.

39 (cc) "Topeka state hospital catchment area" means the area com-
40 posed of the following counties: Brown, Chase, Clay, Cloud, Cof-
41 fey, Dickinson, Doniphan, Douglas, Ellsworth, Geary, Greenwood,
42 Harvey, Jackson, Jewell, Lincoln, Lyon, Marion, Marshall, Mc-
43 Pherson, Mitchell, Morris, Nemaha, Osage, Ottawa, Pottawatomie,

KPA & KAPP

Requests changing definition by inserting "or other treatment facility" in line 5 after "center"

KPA & KAPP

Requests inserting in line 16, after "center" the language "or who is currently treating or evaluating the voluntary or proposed patient"

Staff

Line 17 delete "clinical", statute term is licensed specialist social worker (K.S.A. 65-6308).

ACMHC

1. Line 17, preceding "who" insert "or a registered nurse who has a specialty in psychiatric nursing"
2. Line 19, strike "supervision" insert "direction"

KPA & KAPP

Line 19, before the period, insert "or psychologist"

Bill Simons, Project Acceptance

1. Expand QMHP definition to include private practitioners.
2. Authorize a second opinion from a mental health professional of the consumer's choice.

F.J. Tirrell, Ph.D.

Objects to semantics re term "qualified mental health professional"

Corrina Hartman, Self-Help Resources

1. Feels need separation of service providers from gate keepers, otherwise conflict of interest, re lines 12-19.
2. Only physicians should do mental health evaluations, not case workers or other professionals, lines 12-19.

2-17

1 Republic, Riley, Saline, Sedgwick, Shawnee, Wabaunsee and
2 Washington.

3 (dd) "Larned state hospital catchment area" means the area com-
4 posed of the following counties: Barber, Barton, Cheyenne, Clark,
5 Comanche, Decatur, Edwards, Ellis, Finney, Ford, Gove, Graham,
6 Grant, Gray, Greeley, Hamilton, Harper, Haskell, Hodgeman,
7 Kearny, Kingman, Kiowa, Lane, Logan, Meade, Morton, Ness, Nor-
8 ton, Osborne, Pawnee, Phillips, Pratt, Rawlins, Reno, Rice, Rooks,
9 Rush, Russell, Scott, Seward, Sheridan, Sherman, Smith, Stafford,
10 Stanton, Stevens, Sumner, Thomas, Trego, Wallace and Wichita.

11 (ee) "Catchment area" means the Osawatomie state hospital
12 catchment area, the Topeka state hospital catchment area or the
13 Larned state hospital catchment area.

14 Sec. 17. On January 1, 1991, K.S.A. 59-2905 is hereby amended
15 to read as follows: 59-2905. (a) Any person may be admitted to a
16 treatment facility as a voluntary patient when there are available
17 accommodations and in the judgment of the head of the treatment
18 facility or his or her designee determines such person is in need
19 of treatment therein, except that no such person shall be admitted
20 to a state psychiatric hospital, if there are one or more participating
21 mental health centers located in the catchment area in which the
22 state psychiatric hospital is located, without a written statement
23 authorizing such admission from a qualified mental health profes-
24 sional. Such person, if ~~eighteen (18)~~ 18 years of age or older, shall
25 make written application for admission. If such person is less than
26 ~~eighteen (18)~~ 18 years of age, then the parent or person in loco
27 parentis to such person may make such written application. If such
28 person is ~~fourteen (14)~~ 14 years of age or ~~over~~ older, such person
29 may make such written application on his or her such person's own
30 behalf without the consent or written application of such person's
31 parent, guardian or any other person. In any case, if such person
32 is ~~over eighteen (18)~~ 18 years of age or older and has a guardian,
33 the guardian shall make such application, except as otherwise au-
34 thorized under K.S.A. 1989 Supp. 59-3018a and amendments thereto
35 and except that, in any case, an application may be made by a
36 guardian under this section only after a hearing conducted in ac-
37 cordance with the provisions of K.S.A. 1989 Supp. 59-3018a and
38 amendments thereto and pursuant to an order entered by the court
39 under K.S.A. 1989 Supp. 59-3018a and amendments thereto au-
40 thorizing the guardian to admit such person to an appropriate treat-
ment facility under this section. The head of the treatment facility
or his or her designee may require a statement of such person's
attending physician or a statement of the local health officer of the

KPA, David Rodeheffer

Line 23, delete "authorizing such admission" and
insert in line 24 before the period "regarding
the need for such admission"

2-8

1 area in which such person resides that such person is in need of
2 treatment in a treatment facility. Whenever a minor ~~fourteen~~ (14)
3 *who is 14* years of age or older makes written application on ~~his or~~
4 ~~her~~ *such minor's* own behalf and is admitted as a voluntary patient,
5 the head of the treatment facility shall promptly notify the minor's
6 parent or other person *in loco parentis* of the admittance of such
7 minor.

8 (b) No person shall be admitted as a voluntary patient under the
9 provisions of this act to any treatment facility unless the head of the
10 treatment facility ~~or his or her~~ *designee* has informed such person
11 or such person's parent, guardian or person *in loco parentis* in writing
12 of the following: (a)

13 (1) The rules and procedures of the treatment facility relating to
14 the discharge of voluntary patients; (b)

15 (2) the legal rights of a voluntary patient receiving treatment
16 from a treatment facility; and (c)

17 (3) the types of treatment which are available to the voluntary
18 patient from the treatment facility.

19 Sec. 18. On January 1, 1991, K.S.A. 1989 Supp. 59-2907 is
20 hereby amended to read as follows: 59-2907. (a) The head of a
21 treatment facility shall discharge a voluntary patient within a rea-
22 sonable time but not to exceed three days, excluding Saturdays,
23 Sundays and legal holidays, after the receipt of such patient's written
24 request for discharge. *No patient shall be discharged from a state*
25 *psychiatric hospital without receiving recommendations from the par-*
26 *ticipating mental health center, if there is one, serving the area*
27 *where the patient intends to reside, except that such patient shall*
28 *be discharged within a reasonable time of not to exceed three days,*
29 *excluding Saturdays, Sundays and legal holidays, after the receipt*
30 *of such patient's written request for discharge. If the voluntary*
31 *patient is a minor, the written request for discharge shall be made*
32 *by the minor's parent or person in loco parentis unless the minor*
33 *made written application to become a voluntary patient on the mi-*
34 *nor's own behalf. If a minor 14 or more years of age has made*
35 *written application to become a voluntary patient on the minor's*
36 *own behalf and has requested to be discharged, the head of the*
37 *treatment facility shall promptly inform the minor's parent or other*
38 *person in loco parentis of the request.*

39 (b) Nothing in this act shall prevent the head of the treatment
40 facility or other person from filing an application for determination
of mental illness with respect to a voluntary patient who is refusing
reasonable treatment efforts and is likely to cause harm to self or
others if discharged.

? Re-draft

KPA

Line 25, strike "receiving recommendations from"
and insert "written notification"

1 Sec. 19. On January 1, 1991, K.S.A. 1989 Supp. 59-2908 is
2 hereby amended to read as follows: 59-2908. (a) Any law enforcement
3 officer who has reasonable belief upon observation that any person
4 is a mentally ill person and because of such person's illness is likely
5 to cause harm to self or others if allowed to remain at liberty may
6 take the person into custody without a warrant. The officer shall
7 transport the person to any treatment facility where the person shall
8 be examined by a physician or psychologist on duty at such the
9 treatment facility, except that no person shall be transported to a
10 state psychiatric hospital for examination, if there are one or more
11 participating mental health centers located in the catchment area in
12 which the state psychiatric hospital is located, unless a written state-
13 ment recommending evaluation at a state psychiatric hospital has
14 been obtained from a qualified mental health professional. If no
15 physician or psychologist is on duty at the time the person is trans-
16 ported to the treatment facility, the person shall be so examined
17 within a reasonable time not to exceed 17[12] hours. If a written
18 statement is made by the physician or psychologist at the treatment
19 facility that after preliminary examination the physician or psychol-
20 ogist believes the person to be a mentally ill person and because of
21 the person's illness is likely to cause harm to self or others if allowed
22 to remain at liberty, and if the treatment facility is willing to admit
23 the person, the law enforcement officer shall present to the treatment
24 facility the application provided for in subsection (b) of K.S.A. 59-
25 2909 and amendments thereto. If the physician or psychologist on
26 duty at the treatment facility does not believe the person to be a
27 mentally ill person, the law enforcement officer shall release the
28 person.

29 (b) If the physician or psychologist on duty at the treatment
30 facility states that ~~the physician or psychologist believes, in the~~
31 ~~physician's or psychologist's opinion,~~ the person to be is a mentally
32 ill person but the treatment facility is unwilling to admit the person,
33 ~~or if the treatment facility shall provide a suitable facility in which~~
34 ~~the person may be detained by the law enforcement officer until the~~
35 ~~close of the first day the district court of the county is open for the~~
36 ~~transaction of business, unless the court orders that the person~~
37 ~~remain in custody pursuant to the provisions of K.S.A. 59-2912 and~~
38 ~~amendments thereto.~~ If there is no treatment facility available to
39 receive the person within the territorial limits of the law enforcement
40 officer's jurisdiction, the law enforcement officer may detain the
41 person in any other suitable place until the close of the first day
42 the district court of the county is open for the transaction of business,
43 unless the court orders that the person remain in custody pursuant

KPA

Line 13 delete "recommending evaluation at a state
psychiatric hospital"; line 14, before period insert
"regarding the need for such an evaluation"

ACMHC

17

2-10

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to the provisions of K.S.A. 59-2912 and amendments thereto. If a law enforcement officer detains a person pursuant to this subsection, the law enforcement officer shall file the application provided for in subsection (a) of K.S.A. 59-2912 and amendments thereto, as soon as the court is open for the transaction of business. ~~No~~ [If the place for such detention, other than a treatment facility, is located in a catchment area in which there are one or more participating mental health centers, no] person shall be detained by a law enforcement officer pursuant to this subsection in a nonmedical facility used for the detention of persons charged with or convicted of a crime.

Sec. 20. On January 1, 1991, K.S.A. 1989 Supp. 59-2909 is hereby amended to read as follows: 59-2909. (a) A treatment facility may admit and detain any person for emergency observation and treatment upon an order of protective custody issued by a district court pursuant to K.S.A. 59-2912 and amendments thereto.

(b) A treatment facility may admit and detain any person for emergency observation and treatment upon written application of any law enforcement officer having custody of any person pursuant to K.S.A. 59-2908 and amendments thereto; ~~except that no person shall be admitted to a state psychiatric hospital for emergency observation and treatment, if there are one or more participating mental health centers located in the catchment area in which the state psychiatric hospital is located, unless a written statement recommending the emergency observation and treatment at a state psychiatric hospital has been obtained from a qualified mental health professional.~~ The application shall state:

- (1) The name and address of the person, if known;
- (2) the name and address of the person's spouse or nearest relative, if known;
- (3) the officer's belief that the person is a mentally ill person and because of the person's illness is likely to cause harm to self or others if not immediately detained;
- (4) the factual circumstances under which the person was taken into custody; and
- (5) the fact that the law enforcement officer will submit the application provided for in subsection (a) of K.S.A. 59-2912 and amendments thereto, by 5:00 p.m. of the next full day that the district court is open for the transaction of business or that the officer has been informed by a parent, guardian or other person *in loco parentis* to the person taken into custody that such parent, guardian or other person, whose name shall be stated in the application, will file the application provided for in subsection (b) of K.S.A. 59-2912 and amendments thereto within that time.

← correction
KPA

Lines 23 and 24 by striking "recommending"
and inserting "regarding the need for"

1 (c) A treatment facility may admit and detain any person for
2 emergency observation and treatment upon the written application
3 of any individual, *except that a state psychiatric hospital shall not*
4 *admit and detain any such person, if there are one or more par-*
5 *ticipating mental health centers located in the catchment area in*
6 *which the state psychiatric hospital is located, without a written*
7 *statement authorizing such admission from a qualified mental health*
8 *professional. The application shall state:*

- 9 (1) The name and address of the person, if known;
10 (2) the name and address of the person's spouse or nearest rel-
11 ative, if known;
12 (3) the applicant's belief that the person is a mentally ill person
13 and because of the person's illness is likely to cause harm to self or
14 others if not immediately detained;
15 (4) the circumstances in support of that belief; and
16 (5) the fact that the applicant will submit the application provided
17 for in subsection (b) of K.S.A. 59-2912 and amendments thereto by
18 5:00 p.m. of the next full day that the district court is open for
19 transaction of business.

20 (d) Application of an individual under subsection (c) shall be
21 accompanied by a statement in writing of a physician or psychologist
22 confirming the existence of the described condition of the person
23 and, upon the filing of the application, the head of the treatment
24 facility or the designee of the head of the treatment facility may
25 authorize and order in writing any law enforcement officer or other
26 person to take into custody and transport the person to the treatment
27 facility, *except that no person shall be transported to a state psy-*
28 *chiatric hospital under this subsection, if there are one or more*
29 *participating mental health centers located in the catchment area in*
30 *which the state psychiatric hospital is located, unless a written state-*
31 *ment recommending that the person be transported to a state psy-*
32 *chiatric hospital has been obtained from a qualified mental health*
33 *professional.*

34 (e) Any treatment facility or personnel thereof who in good faith
35 render treatment in accordance with law to any person admitted
36 pursuant to subsection (b) or (c), shall not be liable in a civil or
37 criminal action based upon a claim that the treatment was rendered
38 without legal consent.

39 Sec. 21. On January 1, 1991, K.S.A. 1989 Supp. 59-2912 is
40 hereby amended to read as follows: 59-2912. (a) A district court may
41 issue an order of protective custody upon the verified application of
42 any law enforcement officer or other individual, *except that no*
43 *order of protective custody shall be issued pursuant to this*

11-2
KPA

Line 7, strike "authorizing" and insert "regarding
the need for"

KPA

Line 31, strike "recommending that" and insert
regarding the need for"

2-12

1 has been filed is a mentally ill person, the court shall issue an order
2 of protective custody; otherwise, the court shall terminate the
3 proceedings.

4 (d) The order of protective custody issued pursuant to provisions
5 of this section may authorize a health officer, physician, law en-
6 forcement officer or other person to take the person with respect to
7 whom the application has been filed into custody and to transport
8 and place the person in a designated treatment facility[, except as
9 otherwise provided herein,] or other suitable place willing to receive
10 the person and may designate the place of detention, but no person
11 shall be detained in protective custody in a nonmedical facility used
12 for the detention of persons charged with or convicted of a crime
13 unless other facilities are not available [unless other facilities are
14 not available and the place of such protective custody is in a catch-
15 ment area in which there are no participating mental health cen-
16 ters]. In lieu of such detention, the order of protective custody may
17 allow the person with respect to whom the application has been
18 filed to be at liberty, subject to such conditions as the court may
19 impose, pending the hearing provided for in K.S.A. 59-2917 and
20 amendments thereto. [The court shall not provide in any order of
21 protective custody that the person be transported and placed or
22 detained at a state psychiatric hospital unless a written statement
23 recommending such placement or detention has been obtained from
24 a qualified mental health professional. If a designated treatment
25 facility is unwilling to admit the person, the participating mental
26 health center shall provide a suitable facility in which the person
27 may be detained in protective custody, but no person shall be so
28 detained in a nonmedical facility used for detention of persons
29 charged with or charged of a crime.]

30 Sec. 22. On January 1, 1991, K.S.A. 1989 Supp. 59-2914 is
31 hereby amended to read as follows: 59-2914. (a) Upon the filing of
32 the application provided for in K.S.A. 59-2913 and amendments
33 thereto, the district court shall issue the following:

34 (1) An order fixing the time and place of the hearing on the
35 application. Such hearing, in the court's discretion, may be con-
36 ducted in the courtroom, a treatment facility or other suitable place.
37 The time designated in the order shall in no event be earlier than
38 seven days or later than 14 days after the date of the filing of the
39 application, except that if the proposed patient absents the patient's
40 self and the service of the notice on the proposed patient cannot be
41 served because of the absence, the time of absence shall not be
42 included in computing the time of the expiration of the fourteen-
43 day limitation above set out.

KPA
Line 23, strike "recommending" and insert
"regarding the need for"

2-13

1 court may designate a qualified mental health professional or a case
2 manager employed by a participating mental health center to conduct
3 an investigation pursuant to this section.

4 (7) Upon the motion of any party, containing those statements
5 required by K.S.A. 59-3009 and amendments thereto, orders nec-
6 essary to make a determination of the need for a guardian or con-
7 servator, or both, to act on behalf of the proposed patient. For the
8 purposes of determining whether a guardian or conservator is
9 needed, the hearings required by K.S.A. 59-2917 and 59-3013, and
10 amendments thereto, may be consolidated.

11 (b) Nothing in this section shall prevent the court from granting
12 an order of continuance, for good cause shown, to either party for
13 no longer than seven days, except that such limitation does not apply
14 to a request for an order of continuance made by the proposed
15 patient. The court also, upon request by either party, may advance
16 the date of the hearing if necessary in the interests of all concerned.

17 Sec. 23. On January 1, 1991, K.S.A. 1989 Supp. 59-2914a is
18 hereby amended to read as follows: 59-2914a. (a) After the filing of
19 the application provided for in K.S.A. 59-2913 and amendments
20 thereto and prior to the hearing provided for in K.S.A. 59-2917 and
21 amendments thereto, the court shall issue an order for mental eval-
22 uation. The order of mental evaluation shall be served in the manner
23 provided for in K.S.A. 59-2916 and amendments thereto. It shall
24 order the proposed patient to submit to a mental evaluation and to
25 undergo such evaluation as may be designated by the court in the
26 order, except that any proposed patient who is not under an order
27 of protective custody issued pursuant to K.S.A. 59-2912 and amend-
28 ments thereto and who requests a hearing pursuant to subsection
29 (b), need not submit to such evaluation until the hearing has been
30 held and the court finds that there is probable cause to believe that
31 the proposed patient is a mentally ill person. The evaluation may
32 be held at a treatment facility, the home of the proposed patient or
33 such other suitable place that the court determines is not likely to
34 have a harmful effect on the health of the proposed patient. A state
35 psychiatric hospital shall ~~receive and not be ordered to~~ evaluate
36 any proposed patient ~~ordered evaluated therein~~, if there are one
37 or more participating mental health centers located in the catchment
38 area in which the state psychiatric hospital is located, unless the
39 court has been informed in writing that the evaluation cannot be
40 performed at a participating mental health center. The written au-
41 thorization to have the evaluation performed at a state psychiatric
42 hospital must be presented to the court by the administrator of the
43 participating mental health center or by a qualified mental health



KPA

Lines 40 and 41 strike "authorization" and insert
"evaluation regarding the need"

2-14

1 From the panel so obtained, the proposed patient or the proposed
2 patient's attorney shall strike one name; *then* the applicant, or the
3 applicant's attorney, *shall strike one name*; and so on alternately
4 until each ~~shall have~~ *has* stricken three names. If either party
5 neglects or refuses to aid in striking the names, the court shall strike
6 a name on behalf of such party. If 12 qualified jurors cannot be so
7 empaneled, the court shall draw from such panel or list, by lot,
8 sufficient additional names to empanel 12 qualified jurors.

9 (c) The applicant and the proposed patient shall be afforded an
10 opportunity to appear at the hearing, to testify, and to present and
11 cross-examine witnesses. All persons not necessary for the conduct
12 of the proceedings may be excluded. The hearings shall be conducted
13 in as informal a manner as may be consistent with orderly procedure
14 and in a physical setting not likely to have a harmful effect on the
15 proposed patient. The court shall receive all relevant and material
16 evidence which may be offered, including the testimony or written
17 findings and recommendations of the treatment facility or examiner
18 who has examined or evaluated the proposed patient and the tes-
19 timony or written findings and recommendations of the investigator
20 appointed pursuant to K.S.A. 59-2914 and amendments thereto. Such
21 evidence shall not be privileged for the purpose of this hearing.

22 (d) The rules governing evidentiary and procedural matters at
23 hearings under this section shall be applied so as to facilitate informal,
24 efficient presentation of all relevant, probative evidence and reso-
25 lution of issues with due regard to the interests of all parties.

26 (e) If the applicant is not represented by counsel, the county or
27 district attorney shall represent the applicant, prepare all necessary
28 papers, appear at the hearing and present such evidence as the
29 county or district attorney shall determine to be of aid to the court
30 in determining whether the proposed patient is a mentally ill person.

31 (f) Upon the completion of the hearing, if the court or jury finds
32 by clear and convincing evidence that the proposed patient is a
33 mentally ill person, the court shall order treatment for such person
34 at a treatment facility, *except that the court shall not order treatment*
35 *at a state psychiatric hospital, if there are one or more participating*
36 *mental health centers located in the catchment area in which the*
37 *state psychiatric hospital is located, unless the court has received a*
38 *written recommendation for treatment at a state psychiatric hospital*
39 *from a qualified mental health professional. An order for treatment*
40 *in a treatment facility, except a state psychiatric hospital, shall be*
conditioned upon the consent of such treatment facility.

43 (g) When the court orders treatment, it shall retain jurisdiction
to modify, change or terminate such order.

• KPA

Line 38, strike "recommendation" and insert
"evaluation regarding the need"

572

1 (h) If, upon the completion of the hearing the court or jury finds
2 by clear and convincing evidence that the proposed patient is a
3 mentally ill person has not been shown, the court shall enter the
4 finding in the record and by an appropriate order shall terminate
5 the proceedings.

6 Sec. 26. On January 1, 1991, K.S.A. 1989 Supp. 59-2918 is
7 hereby amended to read as follows: 59-2918. (a) The proposed pa-
8 tient, at any time prior to the hearing provided for in K.S.A. 59-
9 2917 and amendments thereto, may request, in writing, that the
10 hearing be continued for 90 days so that the court may make an
11 order of referral for short-term treatment. Upon receipt of such a
12 request, the court may refer the proposed patient for a period of
13 time not to exceed 90 days, for short-term treatment, to any treat-
14 ment facility. An order of referral for treatment in any treatment
15 facility, ~~except a state psychiatric hospital~~, shall be conditioned
16 upon the consent of such *treatment facility, except that no order of*
17 *referral for treatment in a state psychiatric hospital shall be entered,*
18 *if there are one or more participating mental health centers located*
19 *in the catchment area in which the state psychiatric hospital is*
20 *located, unless the court has received a written recommendation for*
21 *such admission from a qualified mental health professional.* The court
22 may not issue an order of referral unless the attorney representing
23 the proposed patient has filed a statement, in writing, stating that
24 the attorney has explained to the proposed patient the nature of the
25 order of referral and the right to a hearing before a court or jury
26 to determine whether the proposed patient is a mentally ill person.

27 (b) Any proposed patient who has been referred for short-term
28 treatment under this section may be accepted for voluntary admission
29 in a treatment facility pursuant to K.S.A. 59-2905 and amendments
30 thereto. When the proposed patient has been admitted as a voluntary
31 patient, the treatment facility shall file written notice of the patient's
32 acceptance as a voluntary patient in the court which had ordered
33 the referral. The filing of such notice shall constitute a dismissal of
34 the pending application to determine whether the proposed patient
35 is a mentally ill person.

36 (c) Unless the proposed patient has been accepted as a voluntary
37 patient by a treatment facility, the facility treating the proposed
38 patient, not later than 14 days prior to the expiration date of the
39 referral period, shall file a written report of its findings and rec-
40 ommendations with the court. The court shall then set the date for
41 the hearing provided for in K.S.A. 59-2917 and amendments thereto.
42 Such hearing date shall not be later than the expiration date of the
43 referral, unless continued at the proposed patient's request.

KPA
Line 20, strike "recommendation" and insert
"evaluation regarding the need"

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with or convicted of a criminal offense.

2 New Sec. 29. On and after January 1, 1991, each state psychiatric
 3 hospital, which is located in a catchment area in which there are
 4 located one or more participating mental health centers, and the
 5 officers and employees of such state psychiatric hospital, and each
 6 participating mental health center and the officers and employees
 7 thereof, except for gross or wanton negligence, shall be immune
 8 from all civil liability arising out of a decision refusing admission of
 9 a person to, or discharging or conditionally releasing a person from
 10 any treatment facility, or providing treatment for a patient pursuant
 11 to an order for outpatient treatment, which occurs on or after January
 12 1, 1991. Under no circumstances shall any officer or employee of a
 13 state psychiatric hospital, which is located in a catchment area in
 14 which there are located one or more participating mental health
 15 centers, or a participating mental health center performing actions
 16 on or after January 1, 1991, pursuant to the treatment act for mentally
 17 ill persons have a duty to, or be liable for failure to notify, advise
 18 or warn anyone on or after January 1, 1991, concerning the non-
 19 admission, transfer or removal of restrictions on or discharge of any
 20 person absent a showing of gross or wanton negligence.

21 New Sec. 30. (a) On and after January 1, 1991, and subject to
 22 the provisions of subsection (c), no patient shall be admitted to a
 23 state psychiatric hospital pursuant to any of the provisions of the
 24 treatment act for mentally ill persons, including any court-ordered
 25 admissions, if the secretary has notified the supreme court of the
 26 state of Kansas and each district court, which has jurisdiction over
 27 all or part of the area served by the state psychiatric hospital, that
 28 the required program of the state psychiatric hospital has reached
 29 capacity and no more patients may be admitted. Following notifi-
 30 cation that a state psychiatric hospital program has reached its ca-
 31 pacity and no more patients may be admitted, any district court,
 32 which has jurisdiction over all or part of the area served by such
 33 state psychiatric hospital, and any participating mental health center,
 34 which serves all or part of the same area, may request that patients
 35 be placed on a waiting list maintained by the state psychiatric
 36 hospital.

37 (b) In each such case, as each vacancy at the state psychiatric
 38 hospital occurs, the district court and participating mental health
 39 center shall be notified, in the order of their previous requests for
 40 placing a patient on the waiting list, that a patient may be admitted
 41 to the state psychiatric hospital. As soon as the state psychiatric
 hospital is able to admit patients on a regular basis to a program
 for which notice has been given under this section, the superin-

KPA & KAPP

Recommends inserting hospitals licensed under K.S.A. 65-425 or 75-3307b, and amendments thereto, physicians and psychologists under this section in line 5 and line 15.

Attorney General

Objects to exempting state hospitals, and officers and employees thereof, from ordinary negligence standards as section 29 does.

KTLA

Requests deletion of section 29.

will be injurious to the welfare of the patient or former patient;

(9) any information to any state or national accreditation, certification or licensing authority, or scholarly investigator, but the head of the treatment facility shall require, before such disclosure is made, a pledge that the name of any patient or former patient shall not be disclosed to any person not otherwise authorized by law to receive such information;

(10) any information to Kansas advocacy and protective services, inc. which concerns individuals who reside in a treatment facility and which is required by federal law and federal rules and regulations to be available pursuant to a federal grant-in-aid program;

(11) any information relevant to the collection of a bill for professional services rendered by a treatment facility; or

(12) any information sought by a coroner serving under the laws of Kansas when such information is material to an investigation or proceeding conducted by the coroner in the performance of such coroner's official duties. Information obtained by a coroner under this provision shall be used for official purposes only and shall not be made public unless admitted as evidence by a court or for purposes of performing the coroner's statutory duties; or

(13) *any communication and information between or among treatment facilities regarding a proposed patient, patient or former patient for purposes of promoting continuity of care in the psychiatric hospital during treatment and in the community following discharge or conditional release; the proposed patient, patient, or former patient's consent shall not be necessary to share evaluation and treatment records between or among treatment facilities regarding a proposed patient, patient or former patient; as used in this paragraph (13), "proposed patient" and "patient" shall have the meanings respectively ascribed thereto in K.S.A. 59-2902 and amendments thereto.*

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

Sec. 35. On January 1, 1991, K.S.A. 19-4002, 19-4002a, 19-4002b, 59-2905, 65-211, 65-213, 75-3302d and 75-3302e and K.S.A. 1989 Supp. 59-2901, 59-2902, 59-2907, 59-2908, 59-2909, 59-2912, 59-2914, 59-2914a, 59-2916, 59-2917, 59-2918, 59-2918a, 59-2924, 65-4434 and 65-5603 are hereby repealed.

Sec. 36. This act shall take effect and be in force from and after July 1, 1990, and its publication in the statute book.

KPA

Delete (13). This paragraph eliminates the need for a signed release of information by the patient.

11
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