

Approved: 1-30-96
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on January 18, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Feleciano (excused)
Senator Moran (excused)

Committee staff present: Michael Heim, Legislative Research Department
Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes
Janice Brasher, Committee Secretary

Conferees appearing before the committee:

Mr. Ron Smith, Kansas Bar Association
Mr. Randy Hearrell, Judicial Council
Judge Sam Bruner
Mr. John House, Attorney, SRS

Others attending: See attached list

The Chair called the meeting to order at 10:10 a.m.

Bill Introductions:

Mr. Ron Smith, Kansas Bar Association requested that two bills be introduced. The first proposed bill deals with the division of "good will" for professionals in divorce property settlements. The conferee stated that this would reverse the decision in the case *Powell v Powell*. (Attachment 1)

The second bill requested by the conferee came from the KBA Alternative Dispute Resolution Section with the help of the Judicial Council. The conferee explained that this bill would insure that the mediation process is protected by statute against compulsory process so that mediators are not forced to divulge information learned in the mediation process in litigation in another forum. (Attachment 1)

Motion was made by Senator Martin, second by Senator Reynolds to introduce as committee bills both of Mr. Smith's requests. The motion carried.

SB 469--Related to the care and treatment of the mentally ill

The Chair introduced Mr. Randy Hearrell who explained that the Care and Treatment Committee of the Judicial Council was given the charge to review the care and treatment act for mentally ill persons. The objectives were to reorganize the act, make it easier to understand, make recommendations for revisions necessary as a result of mental health reform, K.S.A. 39-1601 et seq. in 1990. The Committee suggested some substantive amendments to the act as a result of this review. The conferee referred to a list of members on the Care and Treatment Committee. (Attachment 2)

Mr. Hearrell introduced the participants in the panel presentation of **SB 469** as Judge Sam Bruner, Chair of the Care and Treatment Committee assigned to review the care and treatment act for mentally ill persons, and Mr. John House, Attorney with the SRS who served on the Committee. Judge Bruner referred to the written material containing the full general comments by the Standing Advisory Committee to the Judicial Council for care and treatment law proposed and prepared for this bill. (Attachment 3)

Judge Bruner explained that the most recent major revision of the current treatment and mental illness law occurred in 1990 with the mental health reform bill. The conferee stated that **SB 469** is the next effort to review mental health reform legislation passed in 1990. The conferee stated that the proposals in **SB 469** having been exposed to public hearings conducted by the Care and Treatment Committee held at the Judicial

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Council level. The conferee stated that the Committee met with the Kansas Advocacy and Protective Services representatives for about a day and some of that group's recommendations were included. The conferee stated that eighty or ninety copies of the draft were distributed to clinicians around the state. The conferee stated that the proposed legislation is to completely replace the current code, rather than to make individual amendments to the current act.

Mr. John House, Judicial Council, SRS explained that while most of the changes **SB 469** makes to current code, Article 29 of K.S.A. Chapter 59 are technical changes, there are however, several substantive changes.

Judge Bruner discussed the eleven substantive changes as listed on the written material. The conferee stated this bill would amend in Section 2 the current definition of "mental illness" by making a distinction between a "mentally ill person" and a "mentally ill person subject to involuntary commitment for care and treatment." Another change would make certain that the person seeking voluntary admission has the capacity to do so by requiring that the head of a treatment facility makes that determination.

The third change made by this bill would allow a guardian who has obtained prior authority to admit his or her ward to a psychiatric treatment facility as a "voluntary" patient without having to obtain an additional court hearing subject to the discretion of the head of the facility. The conferee stated that this was a significant change and was discussed with Advocacy and Protection Services members. The conferee stated that this provision would be beneficial for persons who have cyclical mental illness.

Mr. House commented that guardians would be the substitute decision maker in these cases.

In response to the Chair's question, Judge Bruner stated that currently there is no problem with an individual obtaining routine mental treatment, but an individual can not be admitted to a psychiatric treatment facility without an additional court hearing.

Judge Bruner stated that the recommendation in the bill would give law enforcement officers the authority to take a person suspected of being a mentally ill person into custody upon "reasonable belief" after investigation rather than requiring "personal observation." The conferee stated that observation as a criteria was difficult to adhere to since the law enforcement officers are most likely summoned after the crisis/incident's occurrence. This provision would allow them to collect information from people at the site. This recommended change was brought to the Advisory Committee's attention by law enforcement officers. This provision would also allow the law enforcement officers to return the individual to the place where they were taken into custody and/or another appropriate place if the medical professional determines they are not eligible to be taken to a treatment facility. The conferee stated that this provision protects the law enforcement officer from civil liability during the transportation of that individual.

Judge Bruner stated that under this bill the provision allowing a court ordered investigation into the "character" of the proposed patient was deleted. The conferee explained that general experience was that this statute was not being used. The conferee discussed the next item of change concerning the authorization of a continuance of trial in order that a jury may be assembled in cases where a patient requests a jury trial. Mr. House commented that a jury trial could not be accommodated in the time allowed under current law due to a conflict with jury law.

Judge Bruner explained other substantive changes contained in this legislation as listed:

- Making mandatory a due process hearing upon the revocation of a previously issued order for outpatient treatment which require that the patient be moved to inpatient status.
- Placing a limitation on the court's authority to transfer the venue of a trial from the county in which involuntary commitment proceedings began.
- Deleting from statute the provision for "conditional release" from treatment.
- Requiring the sheriff of the county in which a treatment facility is located to be notified of an involuntary patients's unauthorized absence from a facility.
- Requiring that patients placed in restraint or seclusion be checked every 15 minutes, as opposed to once per hour under current law.

Mr. John House offered some general comments stating that the Advisory Committee was very careful to put parallel provision in this legislation that allow for the option of outpatient treatment. The conferee stated that

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much time was spent trying to make the language simple and understandable.

Judge Bruner commented that the use of outpatient alternatives have been very encouraging, and that he would like to see them used in drug and alcohol treatment cases statutorily.

Discussion followed concerning the proposed amendments contained in **SB 469**.

In response to Senator Vancrum question, Mr. House stated that Kansas is rather unique in that a specific element, "lack of capacity to make an informed decision concerning treatment" is required for involuntary commitment.

Judge Bruner referred to lines 30, 31, and 32 and stated that there is a change in the statute that was not highlighted. The conferee stated that certain mental conditions have been added that can not be used for involuntary commitments. The conferee continued by stating that **SB 469** is an expansion over current Kansas law to prohibit involuntary commitment for the treatment of mental illness, for instances with regard to mentally retarded individuals, or with regard to alzheimer victims, etc. The conferee noted that the language immediately preceding that change in the statute, line 29, states, "whose diagnoses is not solely one of the following." Judge Bruner related that dual diagnoses frequently occur. The conferee concluded by stating that this section is an expansion of current law.

The Chair stated that since there was another conferee who has requested some amendments and wished to express comments, there will be another hearing scheduled for **SB 469**.

The Chair called to the attention of Committee members written testimony of Wendy McFarland, ACLU expressing opposition to **HB 2310** which was heard on January 17, 1996.

The Chair adjourned the meeting.

The next meeting is scheduled for January 23, 1996.



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Memorandum

TO: Hon. Tim Emert, Chair,
Members, Senate Judiciary Committee

FROM: Ron Smith, General Counsel

SUBJ: 1. Division of Good Will in Professional Divorce Actions
2. Confidentiality Of Mediation Processes

DATE: January 18, 1996

On behalf of the KBA we would like introduction of two bills for later hearings.

Legislation to allow division of the good will of a professional practice is requested by the KBA Family Law Section. A proposed amendment to KSA 23-201(b) is attached that accomplishes this recommendation. The amendment reverses the decision in *Powell v. Powell*, 231 Kan. 456, 648 P.2d 218 (1982). Kansas has a minority position on this topic that the Family Law Section would like to discuss with you for public policy purposes.

The second request comes from the KBA Alternative Dispute Resolution Section with the help and interest of the Office of Judicial Administration. We would like to insure that the mediation and conciliation process is protected by statute against compulsory process so that mediators are not forced to divulge information learned in the mediation process in litigation in another forum. There is need to insure that there are certain exceptions to this blanket immunity from compelled process, such as reporting of future crimes or past crimes, or child abuse, that sort of thing. Those matters can be reviewed when the bill is discussed. Our ADR Section will provide testimony at that time.

We would ask for these two bill introductions. Thank you.

enc/ Goodwill
confidentiality

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Attached #1

K.S.A. 23-201(b)

Amended as follows:

23.201. Married persons; separate property; marital property. (a) The property, real and personal, which any person in this state may own at the time of the person's marriage, and the rents, issues, profits or proceeds thereof, and any real, personal or mixed property which shall come to a person by descent, devise or bequest, and the rents, issues, profits or proceeds thereof, or by gift from any person except the person's spouse, shall remain the person's sole and separate property, notwithstanding the marriage, and not be subject to the disposal of the person's spouse or liable for the spouse's debts.

(b) All property owned by married persons, including the present value of any vested or unvested military retirement pay, or professional goodwill to the extent that it is marketable for that particular professional, whether described in subsection (a) or acquired by either spouse after marriage, and whether held individually or by the spouses in some form of co-ownership, such as joint tenancy or tenancy in common, shall become marital property at the time of commencement by one spouse against the other of an action in which a final decree is entered for divorce, separate maintenance, or annulment. Each spouse has a common ownership in marital property which vests at the time of commencement of such action, the extent of the vested interest to be determined and finalized by the court, pursuant to K.S.A. 60-1610 and amendments thereto.

#3

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(Revised 12/95)

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1-18-96
Attach 2-1

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#4

GENERAL COMMENT TO THE REVISED ACT

1 The Care and Treatment Advisory Committee of the Judicial Council was given the
2 charge to review the care and treatment act for mentally ill persons (Article 29 of K.S.A.
3 Chapter 59). The objectives were to: (1) reorganize the act in a more logical order, making it
4 easier to understand and use; (2) make recommendations for revisions necessary as a result of
5 the implementation of mental health reform brought on by the passage of K.S.A. 39-1601 et seq.
6 in 1990; and (3) suggest such substantive amendments to the act as the committee deemed
7 advisable. The members of the committee contributed many hours to this project. The
8 committee met 16 times and carefully reviewed, considered and re-considered each section of
9 the act. The result of the committee's work is the following proposed draft.

10 The proposal is to completely replace the current code with this revision rather than to
11 attempt to make all the individual amendments to the current act which would be required to
12 achieve this same result. This proposed draft does not significantly depart from the main themes
13 of the current law, and many parts of a majority of the sections of this draft are verbatim or
14 nearly verbatim copied from the current law; however, every section of the current act would
15 have to be amended in, at least, some fashion in order to come to this same result. Many
16 sections of the current act have been moved within the order of the act to follow in sequence of
17 how mental illness cases actually proceed through the court system. Other sections were broken
18 up into two or more separate sections in order to group related matters into their own sections.
19 Because of all these changes from the current format, the committee, upon recommendation from
20 the revisor of statutes, has proposed to simply substitute this new "clean" draft for the current
21 code. It is hoped this will avoid confusion, both in considering the proposal, and, if enacted,

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Attach 3

1 in assisting persons who must use the law to be able to follow all of the changed language.

2 Most of the amendments this draft makes to the current code are technical in nature.
3 They are intended to clarify the existing act's meaning and intent, or to expand the current act's
4 procedures to also apply to outpatient as well as inpatient proceedings. The committee has
5 proposed a few substantive changes which the committee believes strengthen the act in ways
6 beneficial to patients. Specific comments explaining the committee's intent follow each section
7 and call attention to the changes made from the current act.

8 Among the changes that have been made within this proposal are that cross references
9 have been included so related sections can be easily reviewed when using a particular section.
10 The committee has attempted to eliminate the "legalese" and relabeled the pleadings to use more
11 commonly understood terms. The sections that require computation of time have also been
12 clarified.

13 Due to the completion of the phased implementation of mental health reform, several
14 repeated technical changes were necessary. For example, the phrase ". . . if there are one or
15 more participating mental health centers located in the catchment area . . ." has been deleted
16 because every county is now within the service area of a participating mental health center. The
17 required screenings and statements mandated in phase by the reform act are now universally
18 required. The language restricting admissions to a state psychiatric hospital that reads ". . .
19 unless a written statement from a qualified mental health professional authorizing . . . has been
20 filed with the court" has been standardized wherever possible.

21 The committee placed great emphasis on making the act consistent with the intent of
22 mental health reform, which emphasizes community-based care and outpatient oriented treatment

1 whenever feasible. The committee is convinced that as resources are diverted to community
2 treatment providers rather than to state hospitals, courts will more often be presented with cases
3 in which a person with a known history of mental illness will be brought before the court in
4 circumstances in which an outpatient treatment order is appropriate. Specific language has been
5 added to guide proceedings through circumstances in which a patient is treated as an outpatient,
6 subject to court orders, where previously the patient would have been admitted to a state
7 hospital.

8 Finally, several substantive changes to the act are recommended by the committee:

- 9 1. Amendment of the current definition of "mental illness" with a
10 distinction made between a "mentally ill person" and a "mentally
11 ill person subject to involuntary commitment for care and
12 treatment" (59-2902a); *See 2 of Bill -*
13
- 14 2. The requirement that the head of a treatment facility make a
15 determination that a person seeking voluntary admission has the
16 capacity to do so (59-2905); *See (5)*
17
- 18 3. Allowance for a guardian who has obtained prior authority to
19 admit his or her ward as a "voluntary" patient to a psychiatric
20 treatment facility and to do so without an additional court hearing,
21 subject to the authority of the head of the treatment facility to
22 divert that patient to another less restrictive treatment, if
23 appropriate (59-2905); ✓
24
- 25 4. Authority of law enforcement officers to take a person suspected
26 of being a mentally ill person into custody upon "reasonable
27 belief" after investigation, rather than requiring personal
28 observation. Language was also added to allow law enforcement
29 officers to return the person to the place where they were taken
30 into custody or to some other appropriate place if the medical
31 professionals determine it not appropriate to detain the person
32 further at a treatment facility (59-2908);
33
- 34 5. The deletion of the provision allowing a court to order an
35 investigation into the "character" of a proposed patient (59-2914);
36

- 1 6. Provisions are added to allow for continuance of the trial in order
2 that a jury may be assembled when the patient requests a jury trial
3 (59-2914, 59-2916, 59-2916b and 59-2917);
4
- 5 7. A provision is added for a mandatory due process hearing upon the
6 revocation of a previously issued order for outpatient treatment
7 which requires that the patient be moved to inpatient status (59-
8 2918a);
9
- 10 8. A limitation is placed upon the court's authority to transfer venue
11 from the county in which involuntary commitment proceedings
12 began (59-2922);
13
- 14 9. The deletion of the provision for "conditional release" from
15 treatment (59-2924);
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- 17 10. A provision is added for the sheriff of the county in which a
18 treatment facility is located to be notified of an involuntary
19 patient's unauthorized absence from a facility (59-2926); and
20
- 21 11. Amended the requirement that patients placed in restraint or
22 seclusion must be checked every 15 minutes, as opposed to once
23 per hour (59-2928).
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25 The committee's rationale for each of these proposed changes is explained in the
26
27 comment following that section.

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**ARTICLE 29 - CARE AND TREATMENT
FOR MENTALLY ILL PERSONS**

New Sec. 1. (previously 59-2901)

COMMENT

The inclusionary references to 59-2943 and 59-2944 have been deleted since those sections as separate sections are eliminated and have been incorporated into the main body of the act. The title of the act is amended to include the term "care and treatment", which the committee finds is commonly used by persons referring to this act. This, however, should not be interpreted to mean that any less emphasis is intended upon the "treatment" purpose of commitment under the act.

1 act is required under due process;

2 (4) "Qualified mental health professional" is clarified to refer to professionals employed
3 by or under contract with a participating mental health center. Current language does not make
4 this restriction clear. Also clarified is the provision that professionals of less than an M.D.,
5 D.O. or Ph.D. psychologist, who are functioning as a qualified mental health professional
6 ("QMHP"), are supervised in this function by an M.D., D.O. or Ph.D. psychologist employed
7 by or under contract to a participating mental health center. The committee notes that some
8 participating mental health centers may contract with a psychiatrist only for medical
9 consultations;

10 (5) "Restraints" and "seclusion", currently found at 59-2902(m) and (n) respectively, are
11 deleted from this section and moved to the section concerning that subject matter (section 33)
12 for ease in reference; and

13 (6) The statutory definitions of the various state hospitals' catchment areas, currently
14 found at 59-2902(bb), (cc), (dd) and generically at (ee), are deleted. These definitions were
15 added to the act at the time mental health reform was enacted and were necessitated because of
16 the phased-in manner of reform. Since that process has now been accomplished, these references
17 and the phrases associated with phased reform appearing throughout the act have been deleted
18 as no longer necessary. The committee is also aware that the catchment areas for each hospital
19 may need to change over time as populations and resources shift and the committee believes that
20 the ability to make these changes should be left to the secretary of social and rehabilitation
21 services.

1 **New Sec. 3.**

2

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COMMENT

4 This new section is added because the committee became aware of inconsistent
5 interpretations of statutory time periods as calculated under the existing act. This section is
6 intended to make such calculations consistent with K.S.A. 60-206 in the Kansas code of civil
7 procedure.

1 section 6), and by the right of any patient to file for a writ of habeas corpus (see section 4).
2 The committee also notes the pre-admission mental health center screening requirements which
3 are required before admission to a state hospital and also notes the existence of the protection
4 and advocacy agency, one of whose purposes is to guard against violations of patients' rights
5 (see K.S.A. 74-5515 and P.L. 99-319, and amendments thereto. [42 U.S.C. 10801 et seq.])
6 With all these safeguards in place, the committee believes the current provisions act as more of
7 a hinderance than a help. The concept behind guardianship is to provide for a substitute
8 decision-maker who is able to quickly act in the best interests of his or her ward. It is in the
9 context of chronically mentally ill persons, whose pattern is that at some point they stop taking
10 their medications, begin to deteriorate, and eventually fall to a level of illness requiring
11 hospitalization, commitment to a hospital and all the legal proceedings attendant thereto, re-
12 establishment of the taking of their medication, followed by rapid progress and re-stabilization
13 allowing the patient to be released, that the committee believes the current legal process that
14 requires a full trial cycle to be repeated each time deterioration sets in before assistance can be
15 provided to be both inefficient and arguably hurtful to the patient, the patient's family and his
16 or her community. The committee intends that a legal guardian should be able to show to the
17 court with jurisdiction over the guardianship that this has been and is likely to be the future
18 pattern the ward will follow, based upon both past experience and medical testimony, obtain
19 continuing authority noted on their Letters of Guardianship to allow the guardian to admit the
20 ward to a treatment facility without the necessity of repeated legal proceedings. The committee
21 also notes that the guardian would always have the option of filing a petition within the
22 guardianship case and having a judicial determination of the need for admission made, and
23 would also construe the provisions of K.S.A. 59-3018a to require the periodic review required

1 by section 25.

2 Here, and throughout the act, the term "in loco parentis" is deleted and substituted by
3 the phrase "other person known to the head of the treatment facility to be interested in the care
4 and welfare of a minor patient." The committee believes this will clarify the meaning. The term
5 "legal guardian" has also been substituted throughout the act to clarify the intent to refer to
6 court-appointed guardians.

1 **New Sec. 6.** (previously 59-2906)

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COMMENT

4 The phrase "reached maximum benefit" is substituted for the existing phrase "no longer
5 advisable" because it is regularly used by clinical professionals.

1 officers being put in the position, because they believed that the law does not authorize them to
2 transport the person back to where they were picked up, of having to abandon these persons in
3 a hospital emergency room or clinic without resources of their own to get back home. In those
4 instances the committee understands the officers did go ahead and transport the person back to
5 his or her home, but that they were concerned about their liability during that drive back across
6 town or across several counties. This amendment is intended to protect the officer in that
7 circumstance, and allows the officer the option to release the person in some other appropriate
8 place if it would not be in the person's or some other person's best interests to have that person
9 returned to their home, for example, in a domestic disturbance case; and

10 (3) In subsection (b), the burden to provide a place of detention until the law enforcement
11 officer can make other arrangements is placed on the treatment facility which has determined
12 the person in custody likely to be a "mentally ill person subject to involuntary commitment for
13 care and treatment" but which declines to accept the person as a patient. The committee notes
14 that treatment facilities are far more likely to have resources to detain such patients than are law
15 enforcement officers in these circumstances, and that the period of time involved will be very
16 short. The committee also understands the scenario addressed will occur only rarely.
17 Generally, the place law enforcement officers will take a person will be the locally designated
18 community hospital emergency room, and arrangements to cover just these types of cases will
19 have been made in advance by and between the mental health centers, the local hospitals and the
20 local law enforcement agencies. In those few cases where that is not the case the committee
21 notes that section 37 provides for the assessment of the expenses of a treatment facility as costs.
22 Accordingly, the committee believes the burden this change places upon the treatment facility
23 is not undue.

1 application for an emergency admission, anything known about pending criminal charges is
2 added. The requirement is added here in order to capture that information before it becomes
3 "lost in the shuffle" and as an additional piece of information that may be helpful to the staff of
4 the treatment facility which has just admitted this person in understanding what they are dealing
5 with. This information has also been added to the required contents of the commitment petition
6 (see section 13); and

7 (4) In subparagraph (c)(7), a QMHP has been added as a person who may sign the
8 statement confirming that the person is likely to be a "mentally ill person subject to involuntary
9 commitment for care and treatment". The committee notes that mental health reform was
10 enacted to encourage people to seek assistance from their local mental health center. If they go
11 there, they will likely be seen by a QMHP and screened. In the scenario presented by this
12 subparagraph, if they have done so, they will have been diverted from a state psychiatric hospital
13 to the private facility at which they now are present. The screening will have performed the
14 function sought by the required statement and the committee intends not to require persons who
15 have gone to a mental health center to be required to obtain a duplicate statement from some
16 other physician or psychologist.

1 this additional request and the required additional information may be combined into a single
2 pleading. The material may also be placed in a separate pleading should the petitioner deem that
3 more desirable.

4 Subsection (c) is added to clarify that the petitioner may also request a temporary custody
5 order to provide for the holding of the proposed patient at a treatment facility until the trial of
6 the case. It, too, is placed in its own subsection to make it clear that this request is optional and
7 distinct from both the main function of the petition and any request for an ex parte emergency
8 custody order.

9 It is expected that currently in most cases all three requests (the petition for a trial, the
10 request for an ex parte emergency custody order, and a request for a temporary custody order --
11 which can only be issued after a probable cause hearing has been held) will be made at the time
12 of the filing of the case. However, through the provisions of sections 14b, 15c and 16b, it is
13 intended to be clear that custody orders do not have to be sought in every case, and should not
14 be sought if not appropriate, but if not sought at the time the petition is filed, may be sought
15 later should a change of circumstances warrant.

1 subparagraph (a)(6) providing for a court-ordered investigation and report concerning a proposed
2 patient's character, family relationships and past conduct. No member of the committee could
3 recall that this provision has ever been used. It seems unnecessary since section 17 provides for
4 a mental evaluation, which is the real issue before the court, and K.S.A. 59-3011, in the
5 guardianship act, provides for this character, family relationships and past conduct investigation
6 if that seems relevant to an issue in a guardianship proceeding. Since subparagraph (a)(7) allows
7 for a mental illness petition and guardianship petition to be combined and heard at once, no need
8 for an independent character investigation could be determined by the committee.

1 **New Sec. 17.** (previously 59-2914a)

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COMMENT

4 This section is amended for clarity. The language in current subsection (b) pertaining to
5 the holding of a probable cause hearing in the circumstance of a proposed patient being at liberty
6 (not subject to a temporary custody order) is moved to a new section, section 18, immediately
7 following. See the comment to that new section.

1 **New Sec. 19.** (previously 59-2916)

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COMMENT

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This section is amended for clarity. Subsection (b)(5) has been added to give the proposed patient notice that his or her trial may be delayed if he or she chooses to demand a

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jury trial, but that there is a limit on the length of the delay.

1 is conducted. By this point, any mental evaluation would already have been completed and the
2 case would have to be ready for trial.

3 (3) Provision is added in subparagraph (c) that the court shall specifically set a new date
4 and time for the hearing and trial that is being continued in order to allow for the referral, and
5 that notice of that confirmed date and time be given to all interested parties. The committee
6 believes this is probably already being done in most cases, but has heard that often the exact date
7 and time were not being communicated, particularly to the treating facility, and that has led to
8 confusion about when the facility's report is due.

9 (4) Language similar to that in subsection 17(b) is added to the end of subsection (d)
10 because the report prepared and filed by the treating facility at the end of the referral period is
11 treated as supplemental to the mental evaluation report which likely was filed at least 90 days
12 earlier. The committee intends the same parties who received the earlier mental evaluation
13 should now receive the update report.

1 **New Sec. 24.** (previously 59-2919)

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COMMENT

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Subsection (a) of this section is updated to reflect the changes of mental health reform, which make participating mental centers the "gatekeepers" to the state psychiatric hospitals.

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This subsection is now made consistent with the deletion of the statutorily defined catchment areas. See the comment to section 2.

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Subsections (b) and (c) are rewrites of current sections 59-2944 (a) and (b), updated and amended for clarity and moved to this section for ease of reference.

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1 **New Sec. 26.** (previously 59-2920)

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COMMENT

4 This section is amended for clarity. The word "may" is substituted for "shall" in the first
5 sentence because the committee believes the intent of the current section is not to require that
6 a court must utilize a relative to transport a patient.

1 further intent is that the same court which hears the trial of a case and orders treatment should
2 normally retain venue to hear the reviews.

3 Four other significant changes are made which the committee does not believe are
4 substantive changes from current law:

5 (1) The last sentence currently found at the end of the first paragraph has been stricken
6 in its entirety, because the committee believes it was primarily intended to allow changes of
7 venue sought because of pre-trial publicity or other circumstances that would make selecting an
8 impartial jury impossible. The committee believes the provision for change of venue for good
9 cause shown would cover any circumstances where the patient could show that he or she would
10 not get a fair hearing.

11 (2) Provision has been added in the second paragraph for facsimile transmission of
12 records to make sure proceedings can be held with the least amount of delay in order to protect
13 the patient's due process rights.

14 (3) The language currently found at the end of the third paragraph referring to the order
15 for a mental evaluation is stricken because the committee believes the earlier requirement that
16 the receiving court proceed as if the petition had originally been filed there means for the
17 receiving court to pick up and proceed in the case from the point the transferring court left it.
18 The committee could see no reason why only this one preliminary order should be singled out,
19 and found no evidence that receiving courts currently feel compelled to reissue custody orders
20 without similar language being in the law saying that such is not necessary. Therefore, the
21 committee concluded the language was unnecessary. It is not the committee's intent that this
22 deletion should be construed as meaning that previously issued orders for the mental evaluation
23 now need to be reissued.

1 (4) Provision was added at the end of the third paragraph to require a continuance of up
2 to 7 days to guarantee that notice of the new location at which a hearing, which had been
3 previously scheduled by a transferring court, will be given to interested parties and to allow for
4 scheduling problems created by a venue transfer. The committee believes such continuances are
5 already required by due process, but adds the language for clarity.

1 committee was concerned that a misinterpretation of that notice or a strictly technical reading
2 of the section could cause termination of the case when it should not be.

3 The provisions concerning notice of conditional release are deleted because of the deletion
4 of the provisions for conditional release in section 28. See the comment to section 28.

1 New Sec. 34. (previously 59-2929)

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COMMENT

4 This section is amended for clarity. The language added to subparagraph (a)(5) is a
5 rewrite of current section 59-2943. Subparagraph (a)(12) is a rewrite of current section 59-
6 2927.

1 New Sec. 35. (previously 59-2931)

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COMMENT

5 This section is amended for clarity. The reference to the "applicant" ("petitioner" as the
6 act has been amended by the committee) in subparagraph (a)(5) is deleted because the committee
7 believes the law does not intend the petitioner to forever have access to the patient's records,
8 but is intended to have access to only so much information as is necessary to prosecute the case.
9 The committee believes that the provisions of (a)(7) cover this need, or it may be provided for
10 by an order issued pursuant to (a)(4).

1 **New Sec. 36.** (previously 59-2932)

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COMMENT

4 This section is revised only by amending the term "application" to read "petition" as that
5 term has been substituted into this draft.

1 **New Sec. 37.** (previously 59-2934)

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COMMENT

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This section is amended only slightly for clarity.

1 **New Sec. 38.** (previously 59-2936)

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COMMENT

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This section is amended and restructured for clarity.

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1 **New Sec. 39.** (previously 59-2937)

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COMMENT

4 This section is amended only slightly to conform to the amended act.

1 **New Sec. 40.** (previously 59-2939)

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COMMENT

4

This section is amended only slightly for clarity.

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1 **New Sec. 41.** (previously 59-2940)

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COMMENT

4 This section is amended for clarity and consistency with the amended act.

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1 **New Sec. 42.** (previously 59-2941)

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COMMENT

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This section is amended only slightly for clarity.

1 **New Sec. 43.** (previously 65-5601)

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COMMENT

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 Though not a part of the care and treatment act, Article 56 of chapter 65 has been reviewed by the committee because it is referenced in section 59-2931 and made integral to it.

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The definitions section was amended in subsection (h) to delete the reference to Norton state

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hospital since it is no longer in operation.

1 **New Sec. 44.** (previously 65-5603)

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COMMENT

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Subparagraph (a)(13) is amended for clarity and consistency with the concept of mental health reform. Subparagraph (a)(14) is added because the committee has heard that many requests for such information are regularly made to the state psychiatric hospitals, which would like to provide this information but report that they can find no current exception which would allow for them to do so. The committee believes no good reason exists why such an exception should not be added.

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