

Approved: 2-6-96
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 25, 1996 in Room 514-S of the Capitol.

All members were present except: Senator Brady (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: Sherry Diel, Kansas Advocacy and Protective Services
Keith Landis, Christian Science Committee Publications
John C. Peterson, Kansas Association of Professional Psychologist
Randy Hearrell, Judicial Council
John House, Attorney, SRS

Others attending: See attached list

The Chair called the meeting to order at 10:00 a.m.

A motion was made by Senator Bond, second by Senator Oleen to approve the Senate Judiciary Minutes of January 17, 1996. The motion carried.

SB 469--Enacting the care and treatment act for mentally ill persons

The Chair stated that this meeting would be the second hearing on **SB 469**, and he introduced Sherry Diel, Kansas Advocacy and Protective Services, Inc (KAPS).

Ms Diel addressed the Committee presenting concerns and recommendations of KAPS regarding **SB 469**. Ms Diel introduced KAPS staff attorneys, Ron Pavelka and Toni Mroz to answer Committee questions. The conferee related information regarding the formation, structure and purpose of KAPS. The conferee addressed the provisions of **SB 469** which KAPS staff supports.

The conferee then addressed proposed amendments not supported by KAPS staff and explained that the result of substantive changes to current law may not provide consumers of mental health services with adequate protection under the law.

The conferee presented recommendations from KAPS staff. The conferee cited a recommended change under New Section 16(a)(4), to include an amendment to allow the consumers to request a continuance to provide for consultation with an attorney. Ms Diel related that in New Section 25, the KAPS staff recommends that the written report also be provided to the patient, and that patients be entitled to automatic review hearings. The KAPS staff recommends that the law be revised to provide that cuffs shackles are prohibited in the transportation of persons with mental illness, unless recommended by a mental health professional knowledgeable about the person's condition.

Included in the written material provided by the conferee were KAPS staff recommendations changing New Section 28, New Section 32(e), and New Section 33(d) addressing the transferring of state hospital patients, the patient's right to object to medication, and procedural protection for patients placed in isolation, (respectfully). Also included were proposed changes relating to New Section 34 concerning protecting the rights of hospitalized persons with mental illness, especially the rights of those with guardians. (Attachment 1)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on January 25, 1996.

In response to a Committee member's inquiry, Ms Diel explained that these changes were recommended by KAPS staff, but the recommendations were not included in **SB 469**.

The Chair stated that a Subcommittee Chaired by Senator Parkinson, and with Senator Petty and Senator Harris serving would meet with Ms Diel and the Judicial Council to workout the issues of concern in **SB 469**.

Mr. Keith Landis addressed the Committee expressing concern for the absence of K.S.A. 59-2910 in the new law. The conferee stated that there are patient rights in the new law, but those rights call for providing treatment in a facility, whereas, Christian Science Practioners can provide treatment without actually being in the facility. Mr. Landis requested on behalf of the Science Christian Society, that the Committee consider including the provision of K.S.A. 59-2910.(Attachment 2)

In response to a Committee member's question, Mr. Landis stated that this issue had not been presented to the Judicial Council.

Mr. House stated that the intent of this section of the law was not to exclude the provision of K.S.A. 59-2910.

Mr. John Peterson, Kansas Association of Professional Psychologist addressed the Committee to offer an amendment to **SB 469**. The proposed amendment presented by the conferee would change the designated terms used for those who sign a certificate which accompanies the petition of involuntary commitment. (Attachment 3)

Mr. House discussed Mr. Peterson's proposed changes and stated that the language could be returned to what is in the current law.

Having no other conferees on **SB 469**, the Chair adjourned the meeting at 10:55 a.m..

The next meeting is scheduled for January 30, 1996.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: 1-25-96

NAME	REPRESENTING
Carol Doo	Topeka Independent Living Resource Center
Pippin Damm	Topeka Independent Living Resource Center
Shawlyn Duggan	WU Intern
Sheryl O'Diel	KAPS
John House	Jud. Council / SRS
Randy M. Hearrell	Judicial Council
John Peterson	Ks Assn of Prof Psych-Legs /
Julie Meyer	Ks Sentencing Commission
Bob Jones	Ks Sentencing Commission
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Harold C. Tiland	KU Intern / Sen. Emerit
Gene Johnson	Ks. ASAP
Ron Pavlica	KAPS
Carla May	KAPS
Dayna Krannawitter	Senator Lana Oleen

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MEMO TO: Members of Senate Judiciary Committee
FROM: Kansas Advocacy & Protective Services, Inc.
DATE: January 25, 1996
RE: Staff Report on Proposed Amendments to the Care and Treatment Act for Mentally Ill Persons

Introduction

Kansas Advocacy & Protective Services, Inc. (KAPS) is a federally funded non-profit corporation which advocates for Kansans with disabilities. KAPS administers four programs: Protection and Advocacy for Individuals with Developmental Disabilities (PADD); Protection and Advocacy for Individuals with Mental Illness (PAIMI); Protection and Advocacy for Individual Rights (PAIR); and Protection and Advocacy for Assistive Technology (PAAT).

The PAIMI staff meet and interact on a regular basis with consumers of mental health services who have personal experience with the involuntary commitment process under Kansas law. Pursuant to federal mandates, the PAIMI staff are obligated to carry out the consumer's expressed wishes. The following comments are based, in large part, on information derived from numerous meetings and conversations over time with consumers of mental health services in treatment facilities throughout Kansas.

Revisions Supported by KAPS Staff

We applaud the effort put forth by the Care and Treatment Advisory Committee of the Judicial Council. KAPS staff believes that progress has been made in reorganizing and clarifying the Act. Many of the sections have been simplified and reorganized in a more logical order.

Furthermore, KAPS staff are especially supportive of the revision to the Treatment Act to make it more compatible with the Mental Health Reform Act. When Mental Health Reform was enacted in Kansas, a significant philosophical statement was made. The presumption was established that community treatment of persons with mental illness is the preferable alternative. In a number of ways, the revisions made by the Judicial Council require enhanced responsibility and involvement on the part of the community mental health centers. This indeed is a desirable outcome.

Sen JudCom
1-25-96
Attach 1

In our view, several of the proposed amendments by the Judicial Council are improvements, from the consumers perspective, in the current law:

- 1) KAPS staff supports the exclusion from the definition of a "mentally ill person subject to involuntary commitment" those persons who have a sole diagnosis that is generally regarded as not being amenable to psychiatric treatment. [**New Section 2(f), Page 2, lines 26-32**; proposed K.S.A. 59-2902a(f)]. KAPS staff is concerned, however, that the list of conditions that provide the basis for exclusion from the definition is not necessarily exhaustive.
- 2) KAPS staff support the proposed amendments which require an order of continuance to be acknowledged before either a judge or a notary public [**New Section 20(a), Page 18, lines 34-38**; proposed K.S.A. 59-2916b(a)]. This will, in our view, provide added assurance that a request for a continuance of treatment is knowing and voluntary. Consequently, the proposed amendment adds a significant protection for consumers of mental health services.
- 3) KAPS staff supports the proposed amendment which requires a hearing to be held after an outpatient treatment order has been revoked and the consumer is detained [**New Section 23(f)(1), Page 22, lines 34-43**; proposed K.S.A. 59-2918a(f)(1)]. In such cases, a significant deprivation of liberty is evident, and requiring a hearing in these instances is a distinct improvement to current law.
- 4) KAPS staff supports the requirement that persons who are hospitalized and placed in seclusion and restraints are monitored at least every 15 minutes [**New Section 33(a), Page 30, lines 12-27**; proposed amendment to K.S.A. 59-2928(a)]. Although less restrictive alternatives are desirable in our view, we believe it is critical that persons who are placed in seclusion and restraints be monitored by hospital staff as frequently as possible.

Proposed Amendments Which Are Not Supported By KAPS Staff

Certain of the proposed amendments concern KAPS staff. These are substantive changes to current law and the result may be failure to provide consumers of mental health services with adequate protections under the law. An explanation of our concerns follows:

- 1) New Section 4(a) combines sections of the current statute to make the point, early in the Act, that hospitalized persons with mental illness do not, by virtue of that status alone, lose their civil rights [**Page 4, lines 38-43 through Page 5, lines 1-4**; proposed K.S.A. 59-2903a]. KAPS staff supports this premise. However, the proposed amendment also states that those civil rights can be limited by "the reasonable rules and regulations which the head of the treatment facility may make for the orderly operation of that facility". This standard seems exceptionally vague; consequently, the standard appears to be susceptible to arbitrary application.

- 2) KAPS staff does not support the language of New Section 5(b)(3) [**Page 5, lines 29-40**; proposed amendment to K.S.A. 59-2905(b)(3)] which would permit, in some cases, "voluntary" admissions of wards by their legal guardians. KAPS staff's reason for concern is based on, but not limited to, the following:
 - a) Involuntary hospitalization is a substantial deprivation of a person's liberty, to be done as a last resort, with adequate due process protections. The protection afforded under the proposed amendment is questionable. Once the Letters of Guardianship contain the authorization for commitment, a guardian could theoretically continue to hospitalize their ward indefinitely.
 - b) In addition, the proposed amendment contains no criteria to determine when this authority is appropriately included in the Letters of Guardianship.
 - c) It has been the experience of KAPS staff that, as a practical matter, the option of the consumer petitioning for a writ of habeas corpus is illusory for some hospitalized persons with mental illness.

- 3) KAPS staff is concerned about the ramifications of New Section 34(a)(6) [**Page 31, lines 24-28**; proposed amendment to K.S.A. 59-2929(a)(6)] concerning the use of psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures. Although the change to current law may appear to be minor, the change is quite significant.

Under current law, both the consumer of mental health services and their guardian must consent to the above procedures. The proposed amendment authorizes either the consumer or the guardian to permit such treatments. This substantial change is of questionable benefit to consumers. Because of the extremely intrusive and potentially hazardous nature of these treatments, guardians must not have the sole authority to consent to the administration of these kinds of treatment.

In addition, the proposed amendment gives guardians the power to authorize treatments that are, in some respects, similar to those that a guardian is not allowed to approve under K.S.A. 59-3018(g)(4). It is KAPS staff's opinion that consistency should be maintained between the Treatment Act and the guardianship laws.

Additional Recommendations

Over time, KAPS staff have encountered many instances in which provisions of the Treatment Act are either carried out or are interpreted in ways that do not appear to be advantageous to consumers of mental health services. An outline of some of the problems identified by KAPS staff and some possible solutions is set forth below:

- 1) New Section 16(a)(4) [**Page 15, line 43 through Page 16, lines 1-4**; proposed amendment to K.S.A. 59-2914] lists orders the court must issue once an involuntary

commitment petition has been filed. One of these orders provides a proposed patient with the opportunity to consult with a court appointed attorney at least five days prior to the trial of the petition.

It has been our experience that in many instances the consumers claim to have not seen their attorney until minutes before the hearing. In our view, the law could be amended to allow the consumers, themselves, to request a continuance. The purposed of the continuance would be to provide for consultation with the attorney.

- 2) New Section 25 [**Page 24, lines 21-30**; proposed K.S.A. 59-2919a] summarizes the procedures to be used in relation to patient's review hearings. According to subsection (a), the treatment facility is required to submit to the court a written report summarizing the treatment provided to the patient 14 days prior to the end of each treatment period. KAPS staff recommends that the written report also be provided to the patient.

KAPS staff does not believe that the proposed amendment to subsection (b) of New Section 25 [**Page 24, lines 31-43 through Page 25, lines 1-4**; proposed K.S.A. 59-2919a] sufficiently provides due process protections to patients, although KAPS staff does view the proposed amendment as an improvement to current law. The proposed amendment to subsection (b) requires the patient's attorney to file a request for a review hearing if the patient desires a hearing. If the patient does not desire a hearing, the patient's attorney shall file a statement with the court that the attorney has consulted with the patient, the manner in which the attorney consulted, that the attorney fully explained to the patient their right to a hearing, but that the patient has decided that they do not want a hearing. Unfortunately, it has been our experience that some patients may lack the ability to conceptually understand their right to a review hearing due to illiteracy, cultural and language barriers, and that some patients may be discouraged from exercising their right. Therefore, KAPS staff recommends that patients be entitled to automatic review hearings, which, in our view, is more consistent with due process standards.

- 3) New Section 26 [**Page 26, lines 5-18**; proposed amendment to K.S.A. 59-2920] addresses the circumstances under which persons with mental illness are to be transported to treatment facilities. It specifically provides that the "least amount of restraint necessary" is to be used in transporting such persons. However, consumers regularly inform KAPS staff of instances where persons with mental illness are automatically shackled and restrained prior to transportation without regard to the person's emotional condition.

From KAPS staff's perspective, it would be beneficial to revise the law to provide that cuffs and shackles are prohibited in the course of transportation unless recommended by a mental health professional knowledgeable about the person's condition.

4) New Section 28 [Page 27, lines 13-25; proposed amendment to K.S.A. 59-2924(a)] is the section of the Treatment Act that pertains to the transfer of state hospital patients. KAPS staff has had a great deal of experience with transfers to a more restrictive environment, e.g. the Security Behavior Ward (SBW) at Larned State Hospital. KAPS staff believes that certain due process standards must be met when patients are transferred to such a restrictive ward. Consequently, we recommend that New Section 28(a) [Page 27, lines 13-25; proposed amendment to K.S.A. 59-2924(a)] be amended with the following principles in mind:

- a) The type of emergency that justifies a transfer to a more restrictive environment without notice should be defined;
- b) The patient is entitled to receive the notice of transfer;
- c) In the case of an emergency, notice should be provided to the patient as soon as possible prior to transfer, and to the patient's legal guardian within a reasonable time after transfer has occurred.
- d) The "least restrictive alternatives" concept should be incorporated into the law; and
- e) If the transfer is to a more restrictive setting, the initial hearing should be automatic. Furthermore, the patient should be entitled to subsequent periodic review hearings.

5) KAPS staff have long been of the opinion that the "right to object" to medication language in New Section 32(e) [Page 29, lines 39-43 through Page 30, lines 1-8; proposed K.S.A. 59-2927a(b)] is strongly slanted to the benefit of the institutional system. Consumers of mental health services often convey to KAPS staff their perception that an administrative review, under the current law, is not a viable one.

It is our understanding that treatment professionals at state hospitals routinely use the initial commitment order to justify involuntary administration of medication throughout the course of a person's treatment. To our knowledge, the issue of a patient's capacity to make informed treatment decisions is rarely, if ever, explicitly reexamined during the period of hospitalization. In KAPS staff's view, this poses a significant due process issue. At a minimum, an individual's capacity to make informed treatment decisions must be assessed contemporaneously with the person's decision to refuse treatment.

6) We recommend that the proposed definition of "seclusion" in New Section 33(d) [Page 30, lines 42-43 through Page 31, line 1; proposed amendment to K.S.A. 59-5928(d)] be broadened to include placing a patient in isolation, either room restriction or quiet room, even if the door is unlocked. It has been our observation that sometimes patients are placed in isolation for long periods of time without any procedural protection.

In KAPS staff's view, placing a patient in isolation, even with an unlocked door, has the same effect as seclusion, in that the patient is unable to leave the room without the risk of negative consequences. Without the procedural safeguards, such as requiring a person with clinical expertise to monitor the situation, abuse could result and appropriate treatment denied. In one particular instance, a patient was placed in room restriction without procedural safeguards for a period of 45.5 hours.

In addition, KAPS staff recommends that the practice of locking two or more patients in a room together should be explicitly prohibited. In 1993, such a practice resulted in the death of a state hospital patient.

- 7) New Section 34(a) [**Page 31, lines 2-43 through Page 32, lines 1-3**; proposed amendment to K.S.A. 59-2929(a)] lists several rights of hospitalized persons with mental illness that are specially protected. Subsection (b) of New Section 34 [**Page 32, lines 4-17**; proposed amendment to K.S.A. 59-2929(b)] outlines a detailed process under which the listed rights may be restricted. It has been our experience with some treatment facilities that, rather than complying with the process for restriction of a patient's rights, a guardian's wishes are seemingly automatically respected. This tends to happen, perhaps most frequently, in the area of visitation. In a representative scenario, facility staff comply with a guardian's directive about visitation without regard to the consumer's wishes. Therefore, KAPS staff recommends that New Section 34 contain language which clearly establishes that all hospitalized persons with mental illness, including those with guardians, are entitled to take advantage of the listed rights.

We appreciate the opportunity to address your Committee on this important issue. Thank you for your consideration of our comments.

#a

Christian Science Committee on Publication For Kansas

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To: Senate Committee on Judiciary

Re? Senate Bill No. 469

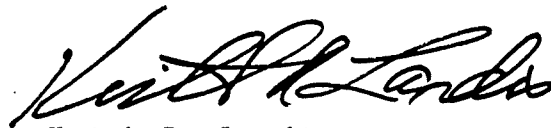
I am grateful that the crafters of this bill retained several provisions of present law which are important to Christian Scientists in Kansas.

K.S.A. 59-2910, which was important to several groups when the present law was enacted, seems to be missing from this bill. That statute requires that a person taken into custody or admitted to a treatment facility be informed immediately of certain rights and be allowed to contact "a reasonable number of persons" from those listed in the statute. Medication or therapy "which will alter the persons mental state in such a way as to adversely affect the person's judgment" may be administered only for protection of person or to sustain life. (Other sections of the law provide for administration of drugs as a part of a patient's treatment.)

New Section 11 (p. 9) does provide that a person involuntarily admitted to a treatment facility is to be advised immediately of the patient rights enumerated in New Section 34 (p.31). These rights, which are also in present law (K.S.A. 59-2929), seem to apply only to a "patient being treated in any treatment facility." Thus, a person who was in custody but was not a patient receiving treatment would not have those rights. The right to communicate other than by letter may be restricted by the head of the treatment facility.

Society requires that the rights of a criminal suspect be respected. Shouldn't a person who is suspected of being mentally ill be accorded similar, and perhaps more expansive, rights?

Please consider including the provisions of K.S.A. 59-2910 in this bill.



Keith R. Landis
Committee on Publication
for Kansas

Sen Jewel Corn
1-25-96
Attach 2

W/T

1 belief is based;

2 (2) to the extent known, the name, age, present whereabouts and
3 permanent address of the person named as possibly a mentally ill person
4 subject to involuntary commitment; and if not known, any information
5 the petitioner might have about this person and where the person resides;

6 (3) to the extent known, the name and address of the person's spouse
7 or nearest relative or relatives, or legal guardian, or if not known, any
8 information the petitioner might have about a spouse, relative or relatives
9 or legal guardian and where they might be found;

10 (4) to the extent known, the name and address of the person's legal
11 counsel, or if not known, any information the petitioner might have about
12 this person's legal counsel;

13 (5) to the extent known, whether or not this person is able to pay for
14 medical services, or if not known, any information the petitioner might
15 have about the person's financial circumstances or indigency;

16 (6) to the extent known, the name and address of any person who
17 has custody of the person, and any known pending criminal charge or
18 charges or of any arrest warrant or warrants outstanding or, if there are
19 none, that fact or if not known, any information the petitioner might have
20 about any current criminal justice system involvement with the person;
21 and

22 (7) the name or names and address or addresses of any witness or
23 witnesses the petitioner believes has knowledge of facts relevant to the
24 issue being brought before the court.

25 The petition shall be accompanied by:

26 (1) A signed certificate from a physician, licensed psychologist or
27 [qualified mental health professional] stating that such professional has per-
28 [sonally examined the person and any available records and has found that
29 the person, in such professional's opinion, is likely to be a mentally ill
30 person subject to involuntary commitment for care and treatment under
31 this act, unless the court allows the petition to be accompanied by a
32 verified statement by the petitioner that the petitioner had attempted to
33 have the person seen by a physician, licensed psychologist or [qualified
34 mental health professional] but that the person failed to cooperate to such
35 an extent that the examination was impossible to conduct;

36 (2) if applicable because immediate admission to a state psychiatric
37 hospital is sought, the necessary statement from a qualified mental health
38 professional authorizing such admission; and

39 (3) if applicable, a copy of any notice given pursuant to section 7 and
40 amendments thereto in which the named person has sought discharge
41 from a treatment facility into which they had previously entered volun-
42 tarily, or a statement from the treating physician or licensed psychologist
43 that the person is a voluntary patient but is refusing reasonable treatment

designee of the head of a treatment facility

designee

San Juel
Attach 3