

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

The meeting was called to order by Chairperson Tim Emert at 10:00 a.m. on February 7, 1996 in Room 514-S of the Capitol.

All members were present except:

Senator Felecianco (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: Jim Clark, County and District Attorneys Association
Senator Wisdom
John House, SRS

Others attending:

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

Bill introductions:

Mr. Jim Clark, County and District Attorneys Association requested several issues be considered for introduction as legislation.

Mr. Clark requested that under K.S.A. 21-3435, concerning knowingly exposing another to a life threatening communicable disease, the violation of section 3(c) be changed from a class A person misdemeanor to a level 8 felony. Mr. Clark requested that references to intent to expose in Sections 1, 2, 3, be stricken. The conferee stated that the Johnson County District Attorney's office had requested the removal of "intent to expose," because intent is difficult to prove; and that office requested raising the penalty for this offense to level 8 person felony.

Mr. Clark stated that next request would amend the arrest statute, K.S.A. 22-2501. The requested amendment would expand the discovery of evidence to *any* crime instead the specific crime/cause initiating the search. The conferee stated that this change would conform to federal law.

Mr. Clark requested a bill that would amend K.S.A. 21-3809 to include juvenile offenders in escape from custody. The conferee stated that the court waiver requirements would remain. Mr. Clark requested that K.S.A. 21-3810 be amended to include juvenile offenders in aggravated escape from custody.

The conferee requested amending the material witness statute, K.S.A. 22-2805, to expand criminal proceedings to include proceedings under the Kansas Juvenile Offenders Code, K.S.A. 38-1601 et seq. The conferee requested appointment of counsel for a material witness in a proceeding to include proceedings under the Kansas Juvenile Offenders Code.

Mr. Clark requested extending the -making a false writing statute- to include issuing or delivering any written instrument. The false writing statute currently only applies to the maker, this bill would expand the statute to those knowingly possessing and/or delivering forged instruments.

A motion was made by Senator Petty, seconded by Senator Reynolds to introduce all of the above as Committee bills. The motion carried.

Senator Wisdom presented several bills to be introduced. The conferee requested that a bill be introduced that would require less than an unanimous verdict in non-capital cases. The conferee requested a bill be

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY, Room 514-S Statehouse, at 10:00 a.m. on February 7, 1996.

introduced to allow the county to charge costs of sexual assault evidence collection kits to the defendant as court costs. The conferee's third bill request would require the SRS to give notice of release or discharge from commitment of juvenile offender. The conferee's fourth request would increase the amount paid to the county by the Department of Corrections.

A motion was made by Senator Bond and seconded by Senator Martin to introduce as Committee bills the requests of Senator Wisdom. The motion carried.

Senator Wisdom requested a bill that would include jailers as law enforcement officers in cases of battery. Discussion concerning existing bill requests for that legislation followed. The Chair asked Senator Wisdom to request a letter from his District Attorney providing the requested provisions to be incorporated in recently requested bills.

Senator Emert requested the introduction of a bill that would make the Kansas statute like the federal statute by not requiring that the school district provide services for special ed-students in private schools.

A motion was made by Senator Oleen, seconded by Senator Reynolds to introduce as a Committee bill. The motion carried.

SB 498--Concerning sentencing for certain alcohol related crimes.

The Chair referred to **SB 498** by stating Gene Johnson recently provided testimony at the hearing of that bill. The Committee discussed **SB 498** with Mr. Johnson.

A motion was made by Senator Petty, seconded by Senator Reynolds to pass SB 498 favorably and place it on the Consent Calendar. The motion carried.

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

Senator Parkinson reported that the Sub-Committee met with members of the Judicial Council, the Kansas Advocacy and Protective Services representative, and a representative of Christian Science Publications to discuss which issues of concern contained in this bill they could work out. Senator Parkinson referred to written material containing changes and agreements. Senator Parkinson stated that the Sub Committee reviewed the requested changes and with some minor modifications, approve and recommend that all these changes and agreements be amended into the bill itself. Senator Parkinson referred to written material containing a few unresolved issues. The conferee stated that all the recommendations by the Sub Committee were in response to requests of Protective Services as a means of protecting the rights of the patients. (Attachment 1)

Mr. House, Judicial Council, referred to Mr. Landis's recommendation that the patient be able to access a medical practitioner of choice. Mr. House stated that recommendations are included in the balloon.

The Committee discussed the amendment proposed by Mr. John Peterson, representing the Kansas Association of Professional Psychologist, which would change the language on page 11, line 27 to "designee" and strike out "qualified mental health professional." Mr. Ron Hein, Kansas Association of Marriage and Family Therapy, spoke in opposition to Mr. Peterson's proposed amendment by stating that the effect of using "designee" would be to take the bill back to the old law, where anyone at the facility could sign the admittance form.

The Chair called for a motion on the amendment requested by Mr. Peterson. No motion was made.

A motion was made by Senator Parkinson, seconded by Senator Petty on the suggested amendments, excluding Mr. Peterson's. The motion carried.

A motion was made by Senator Parkinson, seconded by Senator Petty to move the bill as amended. The motion carried.

The Chair adjourned the meeting at 11:00 a.m.

The next meeting is scheduled for February 8, 1996.

KAPS *KANSAS ADVOCACY & PROTECTIVE SERVICES, INC.*

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MEMO TO: Members of the Senate Judiciary Committee
FROM: Kansas Advocacy & Protective Services, Inc.
RE: Staff Report on SB 469--Care & Treatment Act
DATE: February 7, 1996

The staff of Kansas Advocacy & Protective Services, Inc. (KAPS) previously testified before the full Senate Judiciary Committee concerning our general support for SB 469 as an improvement to current law, but KAPS staff raised serious concerns about three (3) sections of the bill and made seven (7) additional recommendations, from a consumer's standpoint, for improvement to the proposed law. As a result, a special subcommittee was appointed to hear our concerns. We appreciate the time and consideration of Subcommittee Chairman Parkinson and Senators Petty and Harris.

KAPS staff met with Mr. John House, a representative of the Judicial Council, on January 30, 1996 in an attempt to come to agreement on as many of the issues raised by KAPS staff as possible. That meeting was successful in large part, although KAPS staff and the Judicial Council could not come to agreement on every point.

KAPS staff does recognize that pursuant to the Judicial Council's initial efforts and KAPS' advocacy efforts that, over all, SB 469 is an improvement to current law. On this basis, KAPS staff does support recommending this bill for passage. This does not mean, however, that KAPS staff will not pursue litigation to address an issue before the courts if a circumstance arises concerning the provisions that KAPS staff have raised as potential due process violations that have not been rectified by this bill.

KAPS staff recommend SB 469 as amended by the Subcommittee for passage. A summary of the outcome of negotiations with the Judicial Council and KAPS' remaining concerns and recommendations for improvement to SB 469 is set forth below.

KAPS Concerns Which Have Not Been Addressed By Proposed Amendments to SB 469

- 1) New Section 4(a) [Page 5, lines 1-3] relating to the head of the treatment facility's authority to limit a patient's civil rights. *Resolved by the proposed amendment.* This

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issue should be further addressed in either a policy or the regulations promulgated pursuant to the amendments to the Care & Treatment Act.

2) **New Section 5(b)(3) [Page 5, lines 29-40] concerning a "voluntary" commitments by the guardian.** *Not resolved.* The proposed amendment to the guardianship laws which requires review hearings for those patients who have been "voluntarily" committed by their guardians is a good start [See Pages 56-57 of proposed amendments]. However, a two-year continuing order of commitment is too long and constitutes a significant due process violation in our opinion. Conserving judicial resources should not outweigh a person's liberty interest. We believe a ward should be entitled to a hearing every time a guardian seeks to "voluntarily" commit the ward. KAPS staff would consider a six-month continuing order, provided the review hearing required by Section 59 [K.S.A. 59-3018a] is amended pursuant to the recommendations of the Subcommittee. However, KAPS staff must research this issue before committing to the six-month continuing order.

3) **New Section 34(a)(6) [Page 31, lines 24-28] concerning the guardian's authority to authorize the use of experimental or hazardous treatment procedures without consent of the ward.** *Not resolved entirely.* The original version of SB 469 was a significant change to current law that KAPS staff believe constituted a serious due process violation. KAPS staff support the proposed amendment recommended by the Subcommittee. However, KAPS staff recommend that the guardianship laws be amended to correlate with SB 469, as amended, and that careful consideration be given to defining the scope of the procedures listed.

Recommendations for Improvement Initially Proposed by KAPS Staff

1) **New Section 16(a)(4) [Page 15, line 43 through Page 16, lines 1-4] concerning a patient's right to request a continuance to speak with their attorney.** *No amendment necessary.* The concerns raised are adequately addressed by New Section 16(b) [Page 16, lines 14-17].

2) **New Section 25(b) [Page 24, lines 31-43] concerning review hearings.** *Not resolved entirely by the proposed amendment.* KAPS staff believes that due process standards require automatic review hearings and that the patient should be entitled to receive a copy of the written report [See Page 24, lines 21-30]. However, the proposed amendment does place more requirements on the patient's attorney which we believe are an improvement over the proposed language of SB 469.

- 3) **New Section 26 [Page 26, lines 5-18] concerning restraints used during transportation of a consumer of mental health services. *Not resolved.***

- 4) **New Section 28 [Page 27, lines 13-25] concerning Secretary's authority to transfer a patient. *Not resolved.*** KAPS staff believes this is an area which must be addressed by the Legislature. It is KAPS understanding that SRS is in the process of drafting a policy that may address our concerns. Rather than place SB 469's recommendation for passage in jeopardy, KAPS staff will allow SRS an opportunity to deal with this issue administratively, although we seriously question whether a policy, which is subject to change without notice, is an adequate protection. We would like assurances from SRS that the policy approval process will be expedited and that KAPS staff will be given an opportunity to review and comment on the policy before it is put in place.

- 5) **New Section 32(e) [Page 29, lines 39-43, through Page 30, lines 1-8] concerning "right to object" to medication. *Not resolved;*** however, KAPS staff does recognize that the section concerning medical treatment has been significantly improved over current law.

- 6) **New Section 33(d) [Page 30, lines 42-43 through Page 31, line 1] concerning seclusion and restraints. *Resolved by proposed amendment.***

- 7) **New Section 34(a) [Page 32, lines 4-17] involving a guardian's authority to restrict the rights of a patient. *Not resolved.***

KAPS staff appreciates the Judicial Council's willingness to come to the table to attempt to work out our differences. With the exceptions noted above, KAPS staff supports the amendments to SB 469 as recommended by the Subcommittee.

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