Approved: 4/10/98
Date

MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Carmody at 3:30 p.m. on March 18, 1998 in Room 313--S of the Capitol.

All members were present except: Representative Kline (excused)
Representative Powell (excused)
Representative Carmody (excused)
Representative Ruff (excused)
Representative Adkins (excused)
Representative Mays (excused)

Committee staff present: Jerry Ann Donaldson, Legislative Research Department
Mike Heim, Legislative Research Department
Jill Wolters, Revisor of Statutes
Jan Brasher, Committee Secretary

Conferees appearing before the committee:
Blaise Plumber, Assistant City Attorney, Wichita, Kansas
Randy Hearrell, Judicial Council to introduce
Judge Marla Luckert
Don Moler, League of Municipalities
Shirley Moses, Department of Administration
Ed Collister, Attorney, Lawrence, Kansas
Judge Sam Bruner, Chair of the Judicial Council's Care and Treatment Advisory Committee
John House, Member of the Advisory Committee
Ellen Piekaltiewicz, Association of Community Mental Health Centers
Sherry Diel, providing **written testimony only** on behalf of the Kansas Advocacy and Protective Services {James L. Germer}

Others attending: See attached list

Vice Chair Presta called the meeting to order. The Vice Chair stated that Blaise Plumber will be the first conferee on **SB 482** due to Mr. Plumber's schedule.

SB 482: Expungement of diversion agreement, arrest records and violations of city ordinances.

Mr. Blaise Plumber, Assistant City Attorney, Wichita, Kansas testified in opposition to **SB 482**. Conferee Plumber stated that the City of Wichita is opposed to **SB 482** because of the additional cost to the city. The conferee stated that Wichita has sufficient safeguards in place to guard against the misuse of arrest records. The conferee stated that under current law a person convicted of a city ordinance may obtain expungement of the conviction under certain conditions. This bill as amended permits expungement of arrest records, diversion agreements and proceedings resulting in diversion agreements. The conferee discussed the other provisions in **SB 482** and stated that this bill does not make criminal history available to the Board of Education or to the Board of Healing Arts. The conferee stated that the burden of time and expense to municipal courts and law enforcement do not justify the benefit to the person seeking expungement given the restrictions on these records under current law. (Attachment 1)

Randy Hearrell, Judicial Council introduced Judge Marla Luckert.

Judge Marla Luckert testified in support of **SB 482**. Judge Luckert stated that the Criminal Law Advisory Committee was asked to study the expungement statutes at the request of the legislative members of the Judicial Council. Conferee Luckert stated that **SB 482** proposes a remedy for an arrest record being public record and clouding a person's reputation when that individual had been arrested because of misidentification or other specified reasons. The conferee referred to a letter from Kent Russell who wrote of his experience when wrongfully arrested. The conferee discussed recent arrests in this state where the charges were false. The conferee discussed the provisions in the bill as stated in her written testimony. (Attachment 2)

Don Moler, League of Municipalities, testified as neutral on **SB 482**. The conferee stated that the League

originally expressed concerns about the fiscal impact of **SB 482** based on concerns about dual recordkeeping and other requirements. The conferee stated that since that time, the League has contacted municipal court officials and that additional research shows that the cost associated with instituting an expungement program for arrests would be minimal. The conferee stated that some municipal officials expressed support for **SB 482** and indicated they believed it would eliminate some inequities in the current law.

The Conferee stated that the research showed that one possible exception might be the City of Wichita because of the volume of cases processed through their municipal court. The conferee stated that other large jurisdictions do not handle many of the same types of cases, because the district court handles those cases. The conferee offered language to modify the Kansas code of procedure for municipal courts to provide flexibility for the City of Wichita. (Attachment 3)

The Committee discussed with conferees Moler and Luckert issues concerning the system in Wichita and how multiple charges are handled.

The Vice Chair closed the hearing on **SB 482.**

SB 100: Canceled state warrants; payments on; reduction of fee charged when state warrants are reissued

Shirley Moses, Department of Administration, testified in support of **SB 100**. The conferee stated that the amendments in **SB 100** are proposed to implement a fee structure which more fairly assesses to claimants the administrative and processing costs incurred to re-issue warrants not cashed within one year from the date of issuance. The conferee stated that claimants have voiced their displeasure with the current policy and this bill will provide a more equitable fee structure should provide the intangible benefits of improved customer relations and a reduction in administrative time spent on claimant complaints. The conferee stated that **SB 465** was introduced during the 1998 Session to address this issue as well. The conferee stated that the Department of Administration has no position on **SB 465**. (Attachment 4)

In response to a Committee member's question, Conferee Moses stated that a large dollar volume of warrants are cancelled and the amount of fees collected total $13,290.

The Vice Chair closed the hearing on **SB 100.**

SB 456: Claims for compensation by attorneys for indigent defendants

Randy Hearrell, Judicial Council introduced Judge Luckert.

Judge Luckert testified in support of **SB 456**. The conferee stated that the language in **SB 456** requires an appointed attorney to present the attorney's claim for compensation to the court and the defendant at the time of sentencing except if "good cause" exists for not doing so. (Attachment 5)

During discussion with Committee members, Judge Luckert stated that BIDS Board would have costs as scheduled amounts that could be included at the time of sentencing even though some services would be performed after sentencing.

Ed Collister, Attorney from Lawrence, Kansas testified in opposition to **SB 456.** The conferee stated that he is a member of the Judicial Council Criminal Law Advisory Committee, president-elect of the Criminal Law Section of the Kansas Bar Association. The conferee stated that this bill concerns him as a practicing attorney because it changes existing procedure and requires that claims for compensation and reimbursement be presented at the time of sentencing which will consume more attorney and judge time. The conferee stated that this bill does not solve the targeted problem of having all expenses known at the time of sentencing. The conferee stated that the problem is that in a significant number of cases the extent of time expended can not be predicted ahead of time. The conferee offered that if the BIDS Board wants specific orders made by the Judge on attorney's fees for recoupment, restitution, or civil judgment, then the Board could devise a simple one-page form for the Judge to use and an order to be signed and filed at the time the Judge approves the voucher. The conferee stated that this bill would complicate the problem and unwisely spend resources. The conferee stated that the sentencing process should focus on people, not money. (Attachment 6)

Ron Smith, Kansas Bar Association, presented written testimony in opposition to **SB 456**. A concern addressed in the testimony is that this legislation would add possible further delay to the sentencing process. (Attachment 7)

SB 536: Civil commitment; enacting the care and treatment act for persons

with an alcohol or substance abuse problem; amending the care and treatment act for mentally ill persons

Randy Hearrell, Judicial Council, testified in support of **SB 536**. Mr. Hearrell referred to a copy of the "Care and Treatment Act for Mentally Ill Persons" showing the adaptations made to write **SB 536** to be "Care and Treatment Act for Persons with an Alcohol or Substance Abuse Problem." (Attachment 8) Mr. Hearrell introduced Judge Sam Bruner.

Judge Sam Bruner a member of the Judicial Council and its Care and Treatment Committee testified in support of **SB 536**. The conferee stated that this bill recodifies and combines two existing acts: the Treatment Act for Drug Abusers and the Alcoholism and Intoxication Treatment Act and is modeled after the "Care and Treatment Act for Mentally Ill Persons." The conferee stated that the Senate Committee amended the bill to remove K.S.A. 59-2946a referencing the Sex Predator Law, but it is not necessary since the sex predator law was found constitutional. The conferee stated that the out-patient treatment is the current trend for the treatment of alcohol and drug abuse. The conferee discussed the proposed code and the changes this proposed bill will present as discussed in his written testimony. (Attachment 9) The conferee included the membership list for the Care and Treatment Committee. (Attachment 10)

The Committee members discussed with the conferee situations where a person can voluntarily commit for treatment and then the institution determines to involuntarily commit that person. Conferee Bruner explained the current procedure for voluntary treatment. Conferee Bruner stated that there are no long term state treatment programs available.

John House, member of the Care and Treatment Committee, testified in support of **SB 536**. Conferee House referring to his written testimony discussed the features of **SB 536** and the reason for the changes. (Attachment 11) The conferee referred to an amendment that makes some technical corrections and specifies who may do a mental evaluation. (Attachment 12)

Ellen Piekalkiewicz, Association of Community Mental Health Centers, testified in support of **SB 536**. The conferee stated that the Association of Community Mental Health Centers' concern was with language in Section 45 concerning who will do evaluations. The conferee stated that her Association supports the proposed amendment offered by Mr. House. (Attachment 13)

Sherry Diel provided written testimony on behalf of the Kansas Advocacy and Protective Services (James L. Germer) addressing several concerns of the organization. The written testimony outlines additional procedural protections KAPS wishes the committee to consider. The testimony discusses issues concerning the population who are dually diagnosed with both alcohol or substance abuse problems and mental illness. The testimony addresses concerns with who will evaluate the individual. The testimony discusses concerns regarding the guardian's authority to commit and individual. (Attachment 14)

The Vice Chair closed the hearing on **SB 536.**

The Vice Chair adjourned the meeting at 5:25 p.m.

The next meeting is scheduled for March 19, 1998.

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 3-18-98

NAME	REPRESENTING
Ed Callister	self
[illegible]	SRS Attorney and Mary
JOHN HOUSE	SUD. COUNCIL / SRS
Kathy M. Haneell	KS Judicial Council
Whitney Damron	KS BAR ASSN
E. Peck Alkire	Assoc. of CMHCs
KEITH R LANDIS	CHRISTIAN SCIENCE Comm on PUBLICATION FOR KS
Roberta Sue McKenna	SRS Legal
Lynn Hagmaier	SRS CFS
JAMES K. BRUNER	Jud. Council
Marla Luckert	Judicial Council
Shirley Moses	DofA A&R
Brian Friend	DofA A&R
Laverne Cole	Intern Sen. Jayson
Lonna Clore	KCDAA
Christy Molzen	Judicial Council
Susan Andersen	Hein & Weir
Karen Ann Brown	KS Govt Consulting
Carol L. Seifer	State Treasurer

HOUSE JUDICIARY COMMITTEE
GUEST LIST

DATE: 3-18-98

NAME	REPRESENTING
Eric Cartman	South Park, CO

#1

THE CITY OF WICHITA

DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
CITY HALL — THIRTEENTH FLOOR
455 NORTH MAIN STREET
WICHITA, KANSAS 67202 - 1635
(316) 268-4681

March 18, 1998

SENATE BILL 482 EXPUNGEMENT

TESTIMONY BEFORE THE HOUSE JUDICIARY COMMITTEE

The City of Wichita opposes SB 482 as an unfunded mandate to local governments. Non-conviction criminal history records are accessible by criminal justice agencies but dissemination of such records to other agencies or persons is severely restricted under current law. Improper dissemination of criminal history record information is a misdemeanor offense under K.S.A. 22-4707 and grounds for termination of employment for employees of state and local government. Under proposed SB 482, the municipal court must hold expungement hearings for non-conviction records, establish a system of expunged or sealed non-conviction records, and send certified orders to other criminal justice agencies when non-conviction records are expunged. The added burdens imposed by SB 482 on municipal courts are not justified by any corresponding benefit to the privacy interests of an arrestee whose cases are subsequently dismissed or resolved in favor of the accused.

* Current state law regarding municipal court expungements only allows convictions to be expunged. Diversion agreements provide for the dismissal of the underlying charges upon the successful completion of the terms of the diversion contract.

* The Kansas Criminal History Records Act provides that arrest information is confidential and not generally released to the public. See K.S.A. 1997 Supp. 22-4701(b) which defines criminal history record information as data initiated or collected by a criminal justice agency on a person pertaining to a "reportable event." A "reportable event" includes an arrest. See K.S.A. 22-4705 (a)(2). A "reportable event" also includes releasing a person after arrest without filing a charge. See K.S.A. 22-4705 (a)(3). K.S.A. 22-4707 (a) provides that criminal history record information may be disseminated only in accordance with the law. Violation is a Class A nonperson misdemeanor.

* The Kansas Open Records Act provides that a public agency is not required to disclose criminal investigation records (unless a district court orders the release, subject to certain conditions). See K.S.A. 1997 Supp. 45-221(a)(10). Also, K.S.A. 1997 Supp. 45-217(b) defines criminal investigation records as "... records...compiled in the process of preventing, detecting or investigating violations of criminal law (exclusions are listed).

House Judiciary
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Attachment 1

* Under current law a person convicted of a city ordinance may obtain expungement of the conviction if the following conditions are met:
    - Three years have elapsed since the person satisfied the sentence or was discharged from probation, parole or suspended sentence.
    - Five years must have elapsed if the city conviction would also constitute certain other crimes.
    - A petition must be filed asking for the expungement
    - A hearing is held before a municipal court judge
    - The judge finds the defendant has not been convicted of a felony in the past two years and no such proceedings are pending, the circumstances and behavior of the person warrant expungement, and the expungement is consistent with the public welfare.

* SB 482, as amended, permits expungement of arrest records, diversion agreements and proceedings resulting in diversion agreements.

* SB 482, as amended, allows a court to expunge arrest records upon finding that the arrest resulted in mistaken identity, a finding of no probable cause, a not guilty verdict, or expungement would be in the best interests of justice and charges have been dismissed, or no charges have been or are likely to be filed.

* SB 482, as amended, in New Sections 1, 2 and 3, does not specify a period of time to have elapsed in order to qualify for expungement of arrest records. The general criminal statute of limitations is 2 years. SB 482 would allow an arrestee to attempt to expunge his record prior to the expiration of the statute of limitations for the underlying crime.

* The Wichita Police Department arrested 30,039 persons in 1997. If only a small percentage of the persons arrested each year sought expungement under the bill, there will be a considerable burden on the judges, police records staff, the municipal court staff, and prosecutors.
    * Police records personnel will have to maintain separate arrest files for law enforcement purposes. Mug shots, fingerprint and KB information will need to be corrected to show that arrests have been expunged.
    * Court staff will have to process the additional applications and notify the appropriate agencies of the arrest expungements.
    * Victims of certain crimes will be notified pursuant to the Kansas Victims Rights Amendment.
    * Prosecutors will prepare and attend the hearings.
    * Police officers may attend the hearings to testify regarding the sufficiency of evidence and whether charges are anticipated to be filed.

* Judges will preside at the hearings.

* This extra burden would be added weight on a court system that already has a high volume of cases. The Wichita Municipal Court caseload is the highest of any court in the state. The statistics below show the caseload for 1997:

Total Number of New Cases Filed	39,621
Criminal cases	7,271
Traffic cases	21,519
Domestic Violence cases	5,212
Environmental cases	956
DUI cases	2,503
Administrative cases	2,160

* The City of Wichita has five diversion/deferred judgment programs. The caseloads for the five programs (number pending at the start of the year + number filed) for 1997 are as follows:

DUI Diversion Caseload	1004
Speeding Diversion Caseload	971
Domestic Violence Deferred Judgment Caseload	857
Petty Larceny Deferred Judgment Caseload	573
Drug Court Deferred Judgment Caseload	373

* In regard to the question as to why the Wichita Municipal Court volume is high, particularly as to domestic violence and DUI cases, the Wichita City Council has made policy decisions over the years that domestic violence and drunken driver cases are serious crimes and should be addressed in the Wichita Municipal Court. The City Council enacted its domestic violence program before state law required arrests and prosecutions in domestic violence cases. Based on the statistics presented above, it is clear that there is a high volume of cases in these areas. Further, in other jurisdictions, such as Johnson County, the District Attorney, prosecutes all domestic violence cases in district court.

Criminal history, including arrests, should be available to the Board of Healing Arts in determining the fitness of a doctor to practice medicine. No provision is made in the SB 482 for dissemination of criminal history record information, including arrests, to the Board of Healing Arts. Under current law, the Board is entitled to obtain arrest records in investigations and proceedings involving licensure of doctors, K.S.A. 65-2839a(c). No provision is made in SB 482 for dissemination of criminal history record information, including arrests, to the State Board of Nursing for use in denials, revocations, and suspensions of a license to practice as a mental health technician, K.S.A. 65-4209(a)(6).

Criminal history, including arrests, should be available to the Board of Education in determining the fitness of teachers to hold a State teaching certificate. No provision is made in SB 482 for dissemination of criminal history record information, including arrests, to the Board of Education.

Despite the well intentioned effort to allow persons whose criminal case has been terminated in their favor to expunge non-conviction records, the burden of time and expense to municipal courts and law enforcement do not justify the benefit to the person seeking expungement given the restrictions on these records under current law.

Gary E. Rebenstorf
Director of Law and City Attorney

#2

JUDICIAL COUNCIL TESTIMONY IN SUPPORT OF SB 482

At the request of the legislative members of the Judicial Council, the Criminal Law Advisory Committee was asked to study the expungement statutes. Reportedly, there was some confusion as to the meaning of "expungement." Also, there apparently had been a number of inquiries as to why the statutes did not allow for the expungement of arrest and diversion records. Ironically, a procedure has been in place to expunge records of a conviction. Yet, the individual who was found not guilty, who was arrested but never charged or who was wrongfully arrested did not have the ability to remove the records of the proceedings from public view. The committee heard several stories of individuals who had been arrested because of misidentification and who had lingering concerns that some public records remained which could cloud the person's otherwise good name.

Senate Bill 482 proposes a remedy for such situations.

New section 1 proposes a definition for "expungement" to clarify that the term is meant to seal records and make them unavailable except: (1) as provided in the act; (2) to the petitioner and (3) to criminal justice agencies as provided in K.S.A. 22-4701, et seq.

New sections 2 and 3 provide for the expungement of arrest records where the arrested person is not convicted. The provisions parallel each other with section 2 applying to arrests under city ordinances and section 3 applying to arrests for violations of state statutes. One difference between the provisions is that section 2 allows the municipality to set a docket fee for the expungement; the parallel provision in section 3 provides that there will be no docket fee. The procedures detailed in both sections for initiating the expungement are copied from the current expungement statutes as the bill proposes amending those procedures. These changes in procedure can best be illustrated by looking at page 5, lines 37 to 39. The language allows the court to direct the petitioner to give notice and adds a requirement that the arresting law enforcement agency be notified of the request for expungement so that they may be heard.

Under sections 2 and 3, the court may grant the petition to expunge the arrest records upon finding:

1. The arrest resulted from mistaken identity;

2. The arrest resulted in a finding of no probable cause by the court;

3. The arrest resulted in a not guilty verdict; or

4. The expungement would be in the best interests of justice and:
   (a) charges have been dismissed; or
   (b) no charges have been or are likely to be filed.

House Judiciary
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Attachment 2

If the expungement falls within categories 1, 2 or 3, the records are not available except to the petitioner and to agencies as allowed under K.S.A. 22-4701 et seq. If the expungement is allowed under the circumstance where charges have been dismissed or are not likely to be filed, the court has the discretion to make the records available for any of the purposes listed. The list is a copy of the provisions in current statutes which make expunged records under certain circumstances such as where background checks are being performed or application is being made for employment positions in institutions licensed by SRS, in gaming and racing businesses. The full list may be found at page 2, lines 14 through 33.

Sections 4 and 5 amend the current expungement statutes, section 4 relating to expungement of convictions under municipal ordinances and section 5 relating to expungement of convictions under state statutes. These amendments clarify that diversion agreements and proceedings resulting in diversion agreements may be expunged. There is also clarification that the records which become sealed are to include the records of arrest. Finally the changes in procedure discussed before regarding notice are made in the existing statutes. There also are some technical amendments to make language parallel and to incorporate recent changes in the law such as providing for cigarette and tobacco infractions.

KENT RUSSELL
3325 E. English, #105 Wichita, Kansas 67218 (316)687-6959

January 27, 1997

Judge Marla Luckert
Chair of Criminal Law Advisory Commission
301 W. 10th
Topeka, Kansas 66612

Dear Judge Luckert,

I have recently learned after speaking with Patricia Henshaw, Kansas Supreme Court Legal Counsel, that you are reviewing Kansas Expungement Statutes. This is of personal interest to me because one year ago, I was wrongfully arrested by the Wichita Police Department. Even without being charged, I am finding it very difficult to erase the arrest record that could one day haunt me and my good reputation.

Living with the fear of publicity and ridicule are only two of the things that motivate me to set the record straight. Most of all however, I want to believe that the country and state I choose to live has a justice system that protects the truly innocent. It is my goal to have my arrest record from last year expunged as soon as possible. There is no doubt that I am willing to do whatever it takes to once again have the clear record of an admirable citizen.

If there is anything that I may do to help you in your project and the drafting of new legislation, please do not hesitate to call me. Randy Hearrell, Judicial Counsel Research Director has been very helpful in my search to correct this and I respectfully ask for your limited attention to my matter.

Sincerely,

Kent Russell

cc: Randy Hearrell

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DEFENSE SERVICES ADVISORY COMMITTEE

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(05/96)

League of Kansas Municipalities

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TESTIMONY

TO: House Judiciary Committee

FROM: Don Moler, General Counsel

DATE: March 18, 1998

RE: SB 482

Thank you for allowing the League to submit testimony on SB 482 concerning expungement of diversion agreements, arrest records and violations of city ordinances. In oral testimony to the Senate Judiciary Committee, the League originally expressed concerns about the fiscal impact of SB 482 based on concerns about dual recordkeeping and other requirements. Since that time, we have made a concerted effort to contact municipal court officials to discuss the potential impact of SB 482. After completing the additional research, we now believe that the costs associated with instituting an expungement program for not just convictions but also for charges and arrests would be minimal. In fact, some municipal officials expressed support for SB 482 and indicated they believed it would eliminate some inequities in the current law.

From our research, the one possible exception to this might be the City of Wichita which we understand processes tens of thousands of cases through their municipal court on a yearly basis, including a large number of DUI and domestic violence cases. In contrast, municipal courts in other large jurisdictions do not handle many of the same types of cases, leaving them to prosecution in the state district court.

We would therefore suggest the following amendment:

On page 3, following line 11, by inserting the following:

"(h) This section shall be part of and supplemental to the Kansas code of procedure for municipal courts.";

On page 9, following line 6, by inserting the following:

"(i) This section shall be part of and supplemental to the Kansas code of procedure for municipal courts."

We believe that this modification to the Kansas code of procedure for municipal courts would provide the necessary flexibility should this legislation become a problem for the City of Wichita.

Thank you for allowing the League to submit testimony on SB 482.

House Judiciary
3-18-98
Attachment 3

#4

TESTIMONY REGARDING SENATE BILL 100
HOUSE JUDICIARY COMMITTEE
March 18, 1998, 3:30 p.m., Room 313-S

Presented by Shirley A. Moses
Director of Accounts and Reports

Mr. Chairman, Members of the Committee:

I am testifying today on behalf of the Department of Administration in support of SB 100. This bill represents a proposal by the Department to provide more flexible, efficient central services of value to those served.

The amendments in SB 100 are proposed to implement a fee structure which more fairly assesses to claimants the administrative and processing costs incurred to re-issue warrants not cashed within one year from the date of issuance. These warrants are automatically canceled one year from issuance date. However, if the payee subsequently discovers that the warrant was not cashed, a claim may be filed to allow the warrant to be re-issued. The proposed statutory amendment will reduce the fee for processing such claims from the greater of $15 or ten percent, to the greater of $15 or five percent (percentages are calculated based on the amount of the original warrant). The cost to re-issue this type of warrant is estimated at $20. State agencies do not pay these fees and will not be affected by the amendment. The Division of Accounts and Reports administers this process but receives no portion of either the re-issuance fee nor funds restored from warrants canceled which are never claimed.

The present fee structure of ten percent, commensurate with warrant amounts over $150, can become very excessive. Claimants have voiced their displeasure with this policy, with some expressing their concerns to the Office of the Governor and to members of the Legislature. A more equitable fee structure should provide the intangible benefits of improved customer relations and a reduction in administrative time spent on claimant complaints. SB 465 was introduced during the 1998 Session to address this issue as well and has been referred to the House Judiciary Committee. The bill proposes a fee structure of the *lesser* of ten percent or $30. The Department of Administration has no position on SB 465.

Thank you for the opportunity to appear before the Committee today. I would be happy to answer any questions the Committee may have.

House Judiciary
3-18-98
Attachment 4

#5

JUDICIAL COUNCIL TESTIMONY
IN SUPPORT OF SENATE BILL 456
MARCH 18, 1998

The 1996 Legislature requested the Kansas Judicial Council to undertake a study of the interaction between the Judicial Branch and the Board of Indigents' Defense Services (BIDS). In large part, the Legislature requested recommendations to aid in increased recoupment of the attorneys' fees provided through the Board of Indigents' Defense Services. The Legislature identified a number of areas for study, specifically requesting a study of "whether judges should order defendants ro reimburse costs at the time of sentencing." The committee appointed to conduct the study concluded that judges should order defendants to reimburse costs at the time of sentencing. We are before you to support legislation that would implement this recommendation.

The advisory committee that undertook the study included Representative Gayle Mollenkamp, Russell Springs, and Senator Stephen R. Morris, Hugoton. Judges serving on the committee in addition to me were Jack L. Burr, Goodland; William F Lyle, Jr., Hutchinson; Paul E. Miller, Manhattan; and Clark V. Owens II, Wichita. Professor William Rich of Washburn University, Mark J. Sachse, a criminal defense attorney in private practice in Kansas City, Kansas, and Ronald Wurtz were the attorney members.

The Legislature considered a number of the committee's recommendations last session as Senate Bill 28. That bill, as amended, was enacted. The Advisory Committee met again this past summer to consider whether any further recommendations should be made. While the committee disagreed with several of the amendments, the committee felt that only one provision warranted asking the legislature to reconsider a recommendation. That recommendation is in the form of Senate Bill 456. The proposed language requires an appointed attorney to present the attorney's claim for compensation to the court and the defendant at the time of sentencing. If good cause exists, supplemental claims may be considered. It is intended that the supplemental claim will be for the exceptional case where post-sentencing motions are prepared. The attorneys on the committee felt that the claim could be submitted at sentencing because the time spent in count for a sentencing and the time for reviewing a journal entry are usually predictable.

The committee feels a requirement for submission of the claim at the time of sentencing is critical to accomplishing the goal of maximum recoupment, especially in light of other amendments made by the Legislature last year which require the court to enter judgment for the amount of the fee expended, rather than utilize a scheduled amount as the committee had recommended.

The judges and the attorneys on the advisory committee believe that having the defendant presented with a billing for services during the hearing accomplishes several purposes. Most important, the presentation of the billing to a defendant sets the tone for the entire recoupment process. Rather than being told that there will be some amount of an attorney fee to be set in the future, a defendant can be given a clear message. If the court orders payment of a sum certain, a payment schedule can be immediately implemented and the defendant leaves the courthouse with an understanding of the expectation.

House Judiciary
3-18-98
Attachment 5

A second reason is that the amount can be placed in the journal entry immediately. This allows for clear communication to the officer supervising probation. If an amount is set at some future date, there is no clear communication of the order. If at sentencing the court orders that the attorney fee will be the amount approved by BIDS, the court and the court services officer have no way of knowing the final amount approved by BIDS. In the rare case this amount is communicated to the court, there will still be no reporting to the court services or other supervising officer who is expected to work with the defendant to implement a plan for recoupment.

A related problem is having the exact amount formalized into an order of the court. If the court makes findings at the time of sentencing, the attorney fee payment will be incorporated into the journal entry of the sentencing. If the amount is approved at a later time, there is no easy mechanism. Basically, this reverts to the system in place before Senate Bill 28 was adopted and requires a county or district attorney to take steps to formalize the entry of the award into the court record. The post audit and the advisory committee concluded that such additional steps were rarely taken.

Without the formal entry of an amount, the collection procedures through an outside collection firm as authorized under the prior legislation cannot be utilized.

Finally, having the voucher presented in the presence of the defendant provides the defendant an opportunity to be heard before judgment is entered, a critical due process right. This allows a defendant to dispute the accuracy of the voucher. While abuse may be infrequent, the court has no way of verifying the amount of time expended by an attorney on the case, except to the extent the time is for time spent in the courtroom. Often a defendant is better able to make this assessment than the court.

Once again, the committee feels that a contemporaneous accounting and hearing are critical to the success of the recoupment efforts. Therefore, the advisory committee and Judicial Council urge the adoption of Senate Bill 456.

Collister #6

REMARKS FOR HOUSE JUDICIARY COMMITTEE
Considering Senate Bill 456
3/18/98

Thank you for the opportunity to appear before you to comment concerning Senate Bill 456 which proposes to add an amendment to K.S.A. 22-4507. I believe the change will be counterproductive.

I appear here today as a private practicing attorney from Lawrence, Kansas. The bill concerns procedure for submitting vouchers by appointed counsel through the Board of Indigents' Defense Services system. I have been a member of an assigned counsel panel at the trial level in the 7th Judicial District for about 25 years. I perform similar services on the appellate level. Frequently, therefore, I am confronted with the process of submitting vouchers for payment from the BIDS board. I am a member of the Judicial Council Criminal Law Advisory Committee, president-elect of the Criminal Law Section of the Kansas Bar Association, have been Assistant County Attorney for a very short period of time, an Assistant Attorney General for Attorney Generals Londerholm, Frizzell and Miller, and thereafter been in private practice.

The proposed amendment which concerns me is that found in Section 1(b) of the Senate Bill here under consideration. It changes existing procedure and requires that claims for compensation and reimbursement "shall be presented to the court and defendant at the time of sentencing, except that upon good cause shown a supplemental claim may be filed with

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the court at a later time." I believe that in practice this proposal will consume more attorney and judge time, and not achieve the desired result.

Let me first address the reform desired. I assume from the inquiries that I've made that the suggested amendment comes from a Judicial Counsel Advisory Committee on Interaction between the Judicial Branch and the Board of Indigents' Defense Services. This particular recommendation is found at page 6 thereof of their report, #3. To further recoupment efforts of BIDS expenditures, this recommendation would assist by making consistent court orders requiring repayment of expenditures. It suggests that a problem is that at the time of sentencing, costs which would include those claims are not known. The latter fact is usually true and it would remain true if the bill were enacted. However, the proposed amendment does not solve the targeted problem.

The amendment suggests that claims shall be presented to the court at the time of sentencing. Literally interpreted, that means the attorney hands his voucher to the Judge at the time of sentencing. Nothing else is required.

As a practical matter, a felony criminal case is not complete at sentencing. Therefore, requiring the submission of the voucher at that time is premature. As a practical matter, any restitution order or civil judgment order affecting recoupment is made either at sentencing or at a later date when the restitution amount is determined.

As a practical matter, the real problem is that the case is not complete when the sentencing hearing commences, with the defendant and attorney present at court. For the sentencing procedure itself under sentencing guidelines, much more is involved than a lawyer showing up with the client, making a relatively short presentation to the trial court followed by the trial court's imposition of sentence. Under sentencing guidelines, the process is much more involved and lengthy to the extent that no one can predict ahead of time in a significant number of cases the extent of time expenditure.

Under sentencing guidelines the sentencing hearing is combination of the following considerations:

1. The determination of a departure request if made by either the defendant or state hearing with the accompanying evidentiary hearing (pursuant to K.S.A. 21-4716 to 4718).

2. The determination of the appropriate criminal history score with the attendant objections of the defendant to any proposed score and an attendant evidentiary hearing (pursuant to K.S.A. 21-4711 to 4715).

3. In any case where the trial court has statutorily directives, such as the border box cases or the special crimes sentencing consequences, potentially there is a hearing to be held in which either side or both may present evidence to achieve the desired sentence [for example, K.S.A. 21-4704(f)].

Sentencing now is much more complicated than it was prior to 1993.

I would also say that in at least one-half of the felony cases which I would appear, there will be a controversy over the preparation of the Journal Entry, which is supposed to what the court orders in writing. It is further true that in a significant number of cases the area of restitution is not finalized at the sentencing hearing itself. Restitution is treated as of a civil aspect of the case rather than criminal, even though it may be part of a sentencing procedure. More often than not, the determination of restitution is after the sentencing hearing and is resolved either by agreement between counsel, reflected in a restitution order, or resolved by the trial court after an evidentiary hearing on the amount of restitution.

Thus, if the proposed amendment is seen as requiring the trial judge to enter an amount for attorney's fees to be the subject of restitution (which BIDS would call recoupment), and if it is assumed that that figure will be determined at the sentencing hearing itself, in a significant number of cases, the final amount will not be known. The result of the new requirement would then be that the attorney will be required to submit a supplemental voucher; requiring more administrative process; and requiring yet another attempt at recouping or certifying as restitution an additional amount of money, all complicating

the process with more paperwork and more time. Further, if we assume that the trial court is going to enter an amount representing attorney's fees as restitution or costs, that means the Judge is going to have to review the voucher at or during the hearing. The result, a waste of court time for the Judge, and perhaps the attorneys if they are required to wait around for awhile while the Judge makes a careful examination of the voucher as we all expect the Judge to do.

If we expect the defendant to review the voucher also and venture an opinion or disagreement at sentencing, other problems result. The attorney who is submitting the voucher still represents the defendant. The attorney is still required to perform attorney-client tasks until the time a determination is made not to appeal, the Journal Entry is finalized, the restitution hearing is finalized, or any other post-sentence date tasks. Is the Judge to conduct a hearing on whether the defendant's objections to the voucher are valid or should be given more weight than the attorney's explanation of what the attorney did? The attorney has a problem involving lawyer-client privilege in participating in a hearing of that nature unless the privilege is waived. That involves a consideration of the legal rights of the defendant. The attorney cannot represent his own interests on the voucher and the client at the same time. And, if the attorney and the client get into an adversary-type hearing concerning the voucher, how can the attorney continue to

perform tasks required of him by law, and by the rules of the Board of Indigents' Defense Services in the same case.

A standard sentencing form prepared by the Kansas Sentencing Commission is used for sentencing. On the second page of the form is a block to fill in for restitution or costs. Following a resolution of all the issues at sentencing or post sentencing hearings such as a restitution hearing, the Judge will order that a journal entry be prepared. The State prepares the journal entry. If there is concern that in every felony appointment case the Judge determine what the recoupment attorney's fees are to be, why not simply put a box on the standard journal entry form and require that the Judge enter an amount prior to signing the sentencing order. Such a requirement does not necessarily have anything to do with the time when the voucher is submitted, but requires action by the Judge when the last act concerning the case occurs, the Judge's signature on the Journal Entry.

Or, perhaps easier, if the BIDS Board wants specific orders made by the Judge on attorney's fees for recoupment, restitution, or civil judgment, then why doesn't the Board devise a simple one-page form for the Judge to use as an order to be signed and filed at the time the Judge approves the voucher? Every Judge has to approve every claim by an attorney in writing on the form prepared by BIDS. Currently my understanding is that that has to be done within 60 days, absent some special reason why the voucher or attorney

duties are not completed in that time. Why not have the order entered as part of that form and order served on the defendant? A simple and timely method to solve the perceived problem thus in place.

But, the proposed amendment causes additional time consumption for all concerned without much positive result.

Yours very truly,

Ed Collister
Attorney at Law
3311 Clinton Parkway Court
Lawrence, Kansas 66047-2631
(785) 842-3126

APPLICATION FOR APPOINTED DEFENSE SERVICES

(to accompany Financial Affidavit)

STATE VS. _____ District Court Case No. _____

or

IN RE: _____ County _____

NOTICE TO APPLICANT:

A. *General Information*

1. The information on the attached affidavit is *not* confidential.
2. Any information contained on the attached affidavit may be verified by the judge or the Kansas Board of Indigents' Defense Services.
3. False entries may lead to criminal prosecution and conviction.
4. If you do not understand a specific question or need help, ask for assistance.
5. The judge may place you under oath and inquire further about any information provided on this form.

B. *Eligibility for Defense Services*

1. Appointed counsel and other defense services will only be provided to people who cannot afford to pay for these services themselves.
2. If the judge determines that you are able to pay a part of the costs of your defense, you will be found partially indigent and the court will order you to pay for a part of these costs.
3. If, after the date of the alleged offense, you transfer any of your property for less than it is worth, the State may sue to obtain repayment of the cost of your defense.
4. You must inform the court if there is a change in any of the financial information given on the affidavit.

C. *Repayment to the State*

K.S.A. 1997 Supp. 21-4603 provides that persons who are convicted of a crime must reimburse the state for all or part of the attorney fees and expenses paid by the State. K.S.A. 1997 Supp. 21-4610 also provides that persons who are placed on probation or whose sentence is suspended must, as a condition of probation, reimburse the state for all or part of the attorney fees and expenses paid by the State.

The Court also may enter a civil judgment against you for all or part of the attorney fees and costs. Such a judgment will at the maximum be the scheduled cost for the severity level of the crime with which you are charged or the actual cost approved by the Court, if lower.

The Court shall take into account the financial resources and the nature of the burden that payment of such sum will impose. Any person who has been required to pay such sum and who is not willfully in default may petition the sentencing court to waive payment of any remaining balance or portion thereof.

I have read or have had read to me and understand the above notice. I hereby request that court-appointed counsel be provided to me and agree to attempt to repay the State for the costs of my defense if the court so orders.

_____ _____

Date Signature of Defendant

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KANSAS BAR ASSOCIATION

1200 SW Harrison St.
P.O. Box 1037
Topeka, Kansas 66601-1037
Telephone (785) 234-5696
FAX (785) 234-3813
Email: ksbar@ink.org

Memorandum

TO: Members, House Judiciary Committee

FROM: Ron Smith
General Counsel

SUBJ: SB 456

DATE: March 18, 1998

KBA opposes this bill in its current form. Our major concern is that it adds possible further delay to the sentencing process. The bill contemplates that the Defendant would be asked at time of sentencing to review the "bill" and whether he or she understands that they must repay the bill for attorney services. Most of the time the defendant says nothing. Our concern is what do you do if the Defendant says to the court, "This bill isn't right?" If the bill is contested, how does the attorney stop, take extra time to show the court that the billing was correct?

Model Rule of Professional Conduct 1.5 indicates that if a client contests a bill, that attorney-client information necessary for the attorney to prove his bill can be divulged. Is such information to be divulged to the judge at sentencing?

We believe that the best thing to do would be to simply have the Board of Indigent Defense Services determine the average cost of defense for assigned counsel in a given locality or judicial district, post that information with the judges of that district, and let the judge award an amount of attorneys fees that are equal to this average amount, or the amount actually submitted by counsel and paid by BIDS, whichever amount is more. The judge might also warn defendants who request state assistance and a lawyer that if convicted they will have to repay a sum at least the average for this jurisdiction, which is X dollars. That way the defendant will be on notice of AT LEAST the average amount being paid by the state for indigent felony defenses and that will be his or her obligation.

Judge Luckert makes a good point when she indicates concern over the lack of due process to defendants in determining the amounts of attorney fees they should repay. Keep in mind that only 7 to 8% of such moneys are ever recovered by the state (this is a very high percentage, however, compared to other states). This due process problem has resulted since over the years, the legislature has begun the process of "add-ons" to the criminal sentencing process -- fines, fees, and other restitution amounts in order to satisfy requests for reimbursing victims of crime, and reimbursing the crime victims reparations act. We suggest that instead of this piecemeal approach that we have a good interim study on this entire topic of due process for criminal defendants regarding additional costs and victim restitution laws.

Thank you.

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CARE AND TREATMENT ACT
FOR ~~MENTALLY ILL~~ PERSONS *WITH AN*
ALCOHOL OR SUBSTANCE ABUSE PROBLEM

Sec 1

59-~~2945~~ **Name and citation of act.** The provisions of K.S.A. 59-~~2945~~ *29b01* through 59-~~2986~~ *29b40* and amendments thereto shall be known and may be cited as the care and treatment act for ~~mentally ill~~ persons *with an alcohol or substance abuse problem.*

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Sec 2

~~59-2946~~ **Definitions.** When used in the care and treatment act for ~~mentally ill~~ persons *with an alcohol or substance abuse problem*:

(a) "Discharge" means the final and complete release from treatment, by either the head of a treatment facility acting pursuant to K.S.A. 59-~~2950~~ 29b06 and amendments thereto or by an order of a court issued pursuant to K.S.A. 59-~~2973~~ 29b27 and amendments thereto.

(b) "Head of a treatment facility" means the administrative director of a treatment facility or such person's designee.

(c) "Law enforcement officer" shall have the meaning ascribed to it in K.S.A. 22-2202, and amendments thereto.

~~(d) (1) "Mental health center" means any community mental health center organized pursuant to the provisions of K.S.A. 19-4001 through 19-4015 and amendments thereto, or mental health clinic organized pursuant to the provisions of K.S.A. 65-211 through 65-215 and amendments thereto, or mental health clinic organized as a not-for-profit or a for-profit corporation pursuant to K.S.A. 17-1701 through 17-1775 and amendments thereto or K.S.A. 17-6001 through 17-6010 and amendments thereto, and licensed in accordance with the provisions of K.S.A. 75-3307b and amendments thereto.~~

~~(2) "Participating mental health center" means a contract with the secretary of social and rehabilitation services pursuant to the provisions of K.S.A. 39-1601 through 39-1612 and amendments thereto.~~

~~(e) "Mentally ill person" means any person who is suffering from a mental disorder which is manifested by a clinically significant behavioral or psychological syndrome or pattern~~

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and associated with either a painful symptom or an impairment in one or more important areas of functioning, and involving substantial behavioral, psychological or biological dysfunction, to the extent that the person is in need of treatment.

(f) (1) "Mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e), who also lacks capacity to make an informed decision concerning treatment, is likely to cause harm to self or others, and whose diagnosis is not solely one of the following mental disorders: Alcohol or chemical substance abuse; antisocial personality disorder; mental retardation; organic personality syndrome; or an organic mental disorder.

(2) "Lacks capacity to make an informed decision concerning treatment" means that the person, by reason of the person's mental disorder, is unable, despite conscientious efforts at explanation, to understand basically the nature and effects of hospitalization or treatment or is unable to engage in a rational decision-making process regarding hospitalization or treatment, as evidenced by an inability to weigh the possible risks and benefits.

No person who is being treated by prayer in the practice of the religion of any church which teaches reliance on spiritual means alone through prayer for healing shall be determined to be a mentally ill person subject to involuntary commitment for care and treatment under this act unless substantial evidence is produced upon which the district court finds that the proposed patient is likely in the reasonably foreseeable future to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such

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~~a value and extent that the state's interest in protecting the property from such harm outweighs the person's interest in personal liberty.~~

(d) "Other facility for care or treatment" means any mental health clinic, medical care facility, nursing home, the detox units at either Osawatomie state hospital or Larned state hospital, any physician or any other institution or individual authorized or licensed by law to give care or treatment to any person.

(g)*(e)* "Patient" means a person who is voluntary patient, a proposed patient or an involuntary patient.

(1) "Voluntary patient" means a person who is receiving treatment at a treatment facility pursuant to K.S.A. ~~-2949~~ *59-29b05* and amendments thereto.

(2) "Proposed patient" means a person for whom a petition pursuant to K.S.A. 59-~~2952~~*29b08* or K.S.A. 59-~~2957~~*29b13* and amendments; thereto has been filed.

(3) "Involuntary patient" means a person who is receiving treatment under order of a court or a person admitted and detained by a treatment facility pursuant to an application filed pursuant to subsection (b) or (c) of K.S.A. 59-~~2954~~*29b10* and amendments thereto.

(f) "Person with an alcohol or substance abuse problem" means a person who (1) lacks self-control as to the use of alcoholic beverages or any substance as defined in subsection (k); or

(2) uses alcoholic beverages or any substance as defined in subsection (k) to the extent that the person's health may be substantially impaired or endangered without treatment.

(g) (1) "Person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment" means a person with an alcohol or substance abuse problem, as defined in subsection (f), who also is incapacitated by alcohol or any substance

and is likely to cause harm to self or others.

(2) "Incapacitated by alcohol or any substance" means that the person, as the result of the use of alcohol or any substance as defined in subsection (k), has impaired judgment resulting in the person (A) being incapable of realizing and making a rational decision with respect to the need for treatment; or

(B) lacking sufficient understanding or capability to make or communicate responsible decisions concerning either the person's well-being or estate.

(3) "Likely to cause harm to self or others" means that the person, by reason of the person's use of alcohol or any substance, (A) is likely, in the reasonably forseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior threatenting, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state's interest in protecting the property from such harm outweighs the person's interest in personal liberty; or

(B) is substantially unable, except for reason of indigency, to provide for any of the person's basic needs, such as food, clothing, shelter, health or safety, causing a substantial deterioration of the person's ability to function on the person's own.

(h) "Physician" means a person licensed to practice medicine and surgery as provided for in the Kansas healing arts act or a person who is employed by a state psychiatric hospital or by an agency of the United States and who is authorized by law to practice medicine and surgery within that hospital or agency.

(i) "Psychologist" means a licensed psychologist, as defined by K.S.A. 74-5302 and amendments thereto.

~~(j) "Qualified mental health professional" means a physician or psychologist who is employed by a participating mental health center or who is providing services as a physician or psychologist under a contract with a participating mental health center, or a registered masters level psychologist or a licensed specialist social worker or a licensed master social worker or a registered nurse who has a specialty in psychiatric nursing, who is employed by a participating mental health center and who is acting under the direction of a physician or psychologist who is employed by a participating mental health center or who is providing services as a physician or psychologist under a contract with a participating mental health center, or a registered masters level psychologist or a licensed specialist social worker or a licensed master social worker or a registered nurse who has a specialty in psychiatric nursing, who is employed by a participating mental health center and who is acting under the direction of a physician or psychologist who is employed by, or under contract with, a participating mental health center.~~

~~(1) "Direction" means monitoring and oversight including regular, periodic evaluation of services.~~

~~(2) "Licensed master social worker" means a person licensed as a master social worker by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318 and amendments thereto.~~

~~(3) "Licensed specialist social worker" means a person licensed in a social work practice specialty by the behavioral sciences regulatory board under K.S.A. 65-6301 through 65-6318 and amendments thereto.~~

~~(4) "Licensed masters level psychologist" means a person licensed as a masters level psychologist by the behavioral sciences regulatory board under K.S.A. 74-5361 through 74-5373 and amendments thereto.~~

~~(5) "Registered nurse" means a person licensed as a registered professional nurse by the board of nursing under K.S.A. 65-1113 through 65-1164 and amendments thereto.~~

(j) "State certified alcohol and drug abuse counselor" means a person approved by the secretary of social and rehabilitation services to perform assessments using the American Society of Addiction Medicine criteria and employed at a state funded and designated assessment center.

(k) ~~"Secretary" means the secretary of social and rehabilitation services.~~

(k) "Substance" means (1) the same as the term "controlled substance" as defined in K.S.A. 65-4101 and amendments thereto; or

(2) fluorocarbons, toluene or volatile hydrocarbon solvents.

~~(l) "State psychiatric hospital" means Larned state hospital, Osawatomie state hospital, Rainbow mental health facility or Topeka state hospital.~~

~~(m)~~(l) "Treatment" means ~~any service intended to promote the mental health of the patient and rendered by a qualified professional, licensed or certified by the state to provide such service as an independent practitioner or under the supervision of such practitioner~~ *the broad range of emergency, outpatient, intermediate and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to persons within an alcohol or substance abuse problem.*

~~(n)~~*(m)(1)* "Treatment facility" means ~~any mental health center or clinic, psychiatric unit of a medical care facility, state psychiatric hospital, psychologist, physician or other institution or person authorized or licensed by law to provide either inpatient or outpatient treatment to any patient~~ *a public or private treatment facility, or any facility of the United States government available to treat a person for an alcohol or other substance abuse problem, but such term shall not include a licensed medical care facility, a licensed adult care home, a facility licensed under K.S.A. 75-3307b and amendments thereto, a community-based alcohol and drug safety action program certified under K.S.A. 8-1008 and amendments thereto, and performing only those functions for which the program is certified to perform under K.S.A. 8-1008 and amendments thereto, or a psychologist or physician, who may treat in the usual course of the psychologist's or physician's professional practice individuals incapacitated by alcohol or other substances, but who are not exclusively engaged in the usual course of the individual's professional practice in treating such individuals, or any state institution, even if detoxification services may have been obtained at such institution;*

(2) "private treatment facility" means a private agency providing facilities for the care and treatment or lodging of persons with either an alcohol or other substance abuse problem and meeting the standards prescribed in either K.S.A. 65-4013 or K.S.A. 65-4603, and amendments thereto, and licensed under either K.S.A. 65-4014 or K.S.A. 65-4607, and amendments thereto,

(3) "public treatment facility" means a treatment facility owned and operated by any political subdivision of the state of Kansas and licensed under either K.S.A. 65-4014 or K.S.A. 65-4603, and amendments thereto, as an appropriate place for the care and treatment or lodging

of persons with an alcohol or other substance abuse problem.

(e)*(n)* The terms defined in K.S.A. 59-3002 and amendments thereto shall have the meanings provided by that section.

Sec 3

59-~~2947~~ **Computation of time.** In computing the date upon or by which any act must be done or hearing held by under provisions of this article, the day on which an act or event occurred and from which a designated period of time is to be calculated shall not be included, but the last day in a designated period of time shall be included unless that day falls on a Saturday, Sunday or legal holiday, in which case the next day which is not a Saturday, Sunday or legal holiday shall be considered to be the last day.

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Sec. 4

59-~~2948~~ Civil rights of persons subject to the provisions of this act. (a) The fact that a person may have voluntarily accepted any form of ~~psychiatric~~ treatment *for an alcohol or substance abuse problem*, or become subject to a court order entered under authority of this act, shall not be construed to mean that such person shall have lost any civil right they otherwise would have as a resident or citizen, any property right or their legal capacity, except as may be specified within any court order or as otherwise limited by the provisions of this act or the reasonable rules and regulations which the head of a treatment facility may for good cause find necessary to make for the orderly operations of that facility. No person held in custody under the provisions of this act shall be denied the right to apply for a writ of habeas corpus.

(b) There shall be no implication or presumption that a patient within the terms of this act is for that reason alone a disabled person as defined in K.S.A. 59-3002 and amendments thereto.

Sec 5

59-~~2949~~ **Voluntary admission to treatment facility; application; written information to be given voluntary patient.** (a) A ~~mentally ill~~ person *with an alcohol or substance abuse problem* may be admitted to a treatment facility as a voluntary patient when there are available accommodations and the head of the treatment facility determines such person is in need of treatment therein, and that the person has the capacity to consent to treatment, ~~except that no such person shall be admitted to a state psychiatrice hospital without a written statement from a qualified mental health professional authorizing such admission~~.

(b) Admission shall be made upon written application;

(1) If such person is 18 years of age or older the person may make such application for themself; or

(2) (A) If such person is less than 18 years of age, a parent may make such application for their child; or

(B) if such person is less than 18 years of age, but 14 years of age or older the person may make such written application on their own behalf without the consent or written application of their parent, legal guardian or any other person. Whenever a person who is 14 years of age or older makes written application on their own behalf and is admitted as a voluntary patient; the head of the treatment facility shall promptly notify the child's parent, legal guardian or other person known to the head of the treatment facility to be interested in the care and welfare of the minor of the admittance of that child; or

(3) if such person has a legal guardian, the legal guardian may make such application only after obtaining authority to do so pursuant to K.S.A. 59-3018a and amendments thereto. If

the legal guardian is seeking admission of their ward upon an order giving the guardian continuing authority to admit the ward to an appropriate ~~psychiatric~~ treatment facility; the head of the treatment facility may require a statement from the patient's attending physician or from the local health officer of the area in which the patient resides confirming that the patient is in need of ~~psychiatric~~ treatment *for an alcohol or substance abuse problem* in a treatment facility before accepting the ward for admission, and shall divert any such person to a less restrictive treatment alternative as may be appropriate.

(c) No person shall be admitted as a voluntary patient under the provisions of this act to any treatment facility unless the head of the treatment facility has informed such person or such person's parent, legal guardian, or other person known to the head of the treatment facility to be interested in the care and welfare of a minor, in writing, of the following:

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

(2) the legal rights of a voluntary patient receiving treatment from a treatment facility as provided for in K.S.A. 59-~~2978~~ *29b32* and amendments thereto; and

(3) in general terms, the types of treatment which are available or would not be available to a voluntary patient from that treatment facility.

(d) Nothing in this act shall be construed as to prohibit a proposed or involuntary patient with capacity to do so from making an application for admission as a voluntary patient to a treatment facility. Any proposed or involuntary patient desiring to do so shall be afforded an opportunity to consult with their attorney prior to making any such application. If the head of the treatment facility accepts the application and admits the patient as a voluntary patient, then the

head of the treatment facility shall notify, in writing, the patient's attorney, the patient's legal guardian, if the patient has a legal guardian, and the district court which has jurisdiction over the patient of the patient's voluntary status. When a notice of voluntary admission is received, the court shall file the same which shall terminate the proceedings.

Sec 6

59-~~2950~~ Discharge of a voluntary patient. The head of a treatment facility shall discharge any voluntary patient whose treatment in the facility is determined by the head of the treatment facility to have reached maximum benefit. Prior to the discharge, the head of the treatment facility shall give written notice of the date and time of the discharge to the patient and if appropriate, to the patient's parent, legal guardian or other person known to the head of the treatment facility to be interested in the care and welfare of a minor patient.

Sec 7

~~59-2951~~ **Right to discharge of voluntary patient; procedure.** (a) A voluntary patient shall be entitled to be discharged from a treatment facility, by the head of the treatment facility, by no later than the third day, excluding Saturdays, Sundays and holidays, after receipt of the patient's written request for discharge. ~~If the voluntary patient is a patient in a state psychiatric hospital, that hospital shall immediately give either oral or facsimile notice to the participating mental health center serving the area where the patient intends to reside and shall consider any recommendations from that mental health center which may be received prior to the time set for discharge as specified in the notice.~~

(b) (1) If the voluntary patient is an adult admitted upon the application of a legal guardian or pursuant to an order of the court issued pursuant to K.S.A. 59-3018a and amendments thereto, any request for discharge must be made, in writing, by the legal guardian.

(2) If the voluntary patient is a minor, the written request for discharge shall be made by the child's parent or legal guardian except if the minor was admitted upon their own written application to become a voluntary patient made pursuant to K.S.A. 59-~~2949~~ *29b05* and amendments thereto, then the minor may make the request. In the case of a minor 14 or more years of age who had made written application to become a voluntary patient on their own behalf and who has requested to be discharged, the head of the treatment facility shall promptly inform the child's parent, legal guardian, or other person known to the head of the treatment facility to be interested in the care and welfare of the minor of the minor's request for discharge.

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Sec 8

59-~~2952~~ Petition for involuntary commitment of a voluntary patient. The head of a treatment facility or other person may file a petition pursuant to K.S.A. 59-~~2957~~ *29b13* and amendments thereto seeking involuntary commitment of a voluntary patient who is refusing reasonable treatment efforts or has requested discharge from the treatment facility. ~~A petition filed by the head of a state psychiatric hospital, or such person's designee, accompanied by a statement from a physician or psychologist employed at the hospital that the physician or psychologist believes the person to be mentally ill person subject to involuntary commitment does not need to be accompanied by a written statement from a qualified mental health professional authorizing admission to a state psychiatric hospital.~~

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Sec 9

59-~~2953~~ **Investigation; emergency detention; authority and duty of law enforcement officers.** (a) Any law enforcement officer who has a reasonable belief formed upon investigation that a person *may be* ~~is~~ a ~~mentally ill~~ person *with an alcohol or substance abuse problem subject to involuntary commitment* and ~~because of such person's mental illness~~ is likely to cause harm to self or others if allowed to remain at liberty may take the person into custody without a warrant. The officer shall transport the person to a treatment facility *or other facility for care or treatment* where the person shall be examined by a physician or psychologist on duty at the ~~treatment~~ facility~~, except that no person shall be transported to a state psychiatric hospital for examination, unless a written statement from a qualified mental health professional authorizing such an evaluation at a state psychiatric hospital has been obtained~~. If no physician or psychologist is on duty at the time the person is transported to the ~~treatment~~ facility, the person shall be examined within a reasonable time not to exceed 17 hours. If a written statement is made by the physician or psychologist at the ~~treatment~~ facility that after preliminary examination the physician or psychologist believes the person likely to be a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment and ~~because of the person's mental illness~~ is likely to cause harm to self or others if allowed to remain at liberty, and if the *facility is a* treatment facility and is willing to admit the person, the law enforcement officer shall present to ~~the~~ *that* treatment facility the application provided for in subsection (b) of K.S.A. 59-~~2954~~ *29b10* and amendments thereto. If the physician or psychologist on duty at the ~~treatment~~ facility does not believe the person likely to be a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment the law enforcement officer shall return the person to the

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place where the person was taken into custody and release the person at that place or at another place in the same community as requested by the person or if the law enforcement officer believes that it is not in the best interests of the person or the person's family or the general public for the person to be returned to the place the person was taken into custody, then the person shall be released at another place the law enforcement officer believes to be appropriate under the circumstances. The person may request to be released immediately after the examination, in which case the law enforcement officer shall immediately release the person, unless the law enforcement officer believes it is in the best interests of the person or the person's family or the general public that the person be taken elsewhere for release.

(b) If the physician or psychologist on duty at the ~~treatment~~ facility states that, in the physician's or psychologist's opinion, the person is likely to be a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment but the ~~treatment~~ facility is unwilling *or is an inappropriate place to which* to admit the person, the ~~treatment~~ facility shall *nevertheless* provide a suitable ~~facility in~~ *place at* which the person may be detained by the law enforcement officer. If a law enforcement officer detains a person pursuant to this subsection, the law enforcement officer shall file the petition provided for in subsection (a) of K.S.A. 59-~~2957~~ *29b13* and amendments thereto, by the close of business of the first day that the district court is open for the transaction of business or shall release the person. 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 *unless no other suitable facility at which such person may be detained is willing to accept the person.*

Sec 10

59-~~2954~~ Emergency observation and treatment; authority of treatment facility's procedure. (a) A treatment facility may admit and detain any person for emergency observation and treatment upon an ex parte emergency custody order issued by a district court pursuant to K.S.A. 59-~~2958~~ *29b14* and amendments thereto.

(b) A treatment facility *or the detox unit at Osawatomie state hospital or at Larned state hospital* may admit and detain any person presented for emergency observation and treatment upon written application of a law enforcement officer having custody of that person pursuant to K.S.A. 59-~~2953~~ *29b09* and amendments thereto ~~, except that a state psychiatric hospital shall not admit and detain any such person unless a written statement from a qualified mental health professional authorizing such admission to a state psychiatric hospital has been obtained~~. The application shall state:

(1) The name and address of the person sought to be admitted, 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~~ *may be* a ~~mentally ill~~ *person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment* and ~~because of the person's mental illness~~ is likely to cause harm to self or others if not immediately detained;

(4) the factual circumstances in support of that belief and the factual circumstances under which the person was taken into custody including any known pending criminal charges; and

(5) the fact that the law enforcement officer will file the petition provided for in K.S.A. 59-~~2957~~ *29b13* and amendments thereto, by the close of business of the first day thereafter that

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the district court is open for the transaction of business, or that the officer has been informed by a parent, legal guardian or other person, whose name shall be stated in the application will file the petition provided for in K.S.A. 59-~~2957~~ *29b13* and amendments thereto within that time.

(c) A treatment facility may admit and detain any person presented for emergency observation and treatment upon the written application of any individual. ~~, except that a state psychiatric hospital shall not admit and detain any such person, unless a written statement from a qualified mental health professional authorizing such admission to a state psychiatric hospital has been obtained.~~ The application shall state:

(1) The name and address of the person sought to be admitted, if known;

(2) the name and address of the person's spouse or nearest relative, if known;

(3) the applicant's belief that the person ~~is~~ *may be* a ~~mentally ill~~ person *with an alcohol or substance abuse problem subject to involuntary commitment* and ~~because of the person's mental illness~~ is likely to cause harm to self or others if not immediately detained;

(4) the factual circumstances in support of that belief;

(5) any pending criminal charges, if known;

(6) the fact that the applicant will file the petition provided for in K.S.A. 59-~~2957~~ *29b13* and amendments thereto by the close of business of the first day thereafter that the district court is open for the transaction of business; and

(7) ~~if~~ the application ~~is to a treatment facility other than a state psychiatric hospital it~~ shall also be accompanied by a statement in writing of a physician, psychologist, or ~~qualified mental health professional~~ *state certified alcohol and drug abuse counselor* finding that the person is likely to be a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to

involuntary commitment for care and treatment under this act.

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

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Sec 11

59-~~2955~~ Notice of right to communicate upon admission; notice of admission; notice of rights. (a) Whenever any person is involuntarily admitted to or detained at a ~~treatment~~ facility pursuant to subsection (b) or (c) of K.S.A. 59-~~2954~~ *29b10* and amendments thereto, or pursuant to an ex parte emergency custody order issued pursuant to K.S.A. 59-~~2958~~ *20b14* and amendments thereto, the head of the ~~treatment~~ facility shall:

(1) Immediately advise the person in custody that such person is entitled to immediately contact the person's legal counsel, legal guardian, personal physician or psychologist, minister of religion, including a Christian Science practitioner or immediate family as defined in subsection (b) or any combination thereof. If the person desires to make such contact, the head of the ~~treatment~~ facility shall make available to the person reasonable means for making such immediate communication;

(2) provide notice of the person's involuntary admission including a copy of the document authorizing the involuntary admission to that person's attorney or legal guardian, immediately upon learning of the existence and whereabouts of such attorney or legal guardian, unless that attorney or legal guardian was the person who signed the application resulting in the patient's admission. If authorized by the patient pursuant to K.S.A. 65-5601 through 65-5605 and amendments thereto, the head of the ~~treatment~~ facility also shall provide notice to the patient's immediate family, as defined in subsection (b), immediately upon learning of the existence and whereabouts of such family, unless the family member to be notified was the person who signed the application resulting in the patient's admission; and

(3) immediately advise the person in custody of such person's rights provided for in K.S.A. 59-~~2978~~ *29b32* and amendments thereto.

(b) "Immediate family" means the spouse, adult child or children, parent or parents, and sibling or siblings, or any combination thereof.

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Sec 12

59-~~2956~~ Emergency observation; discharge. The head of the ~~treatment~~ facility shall discharge any person admitted pursuant to subsection (a) of K.S.A. 59-~~2954~~ *29b10* and amendments thereto when the ex parte emergency custody order expires, and shall discharge any person admitted pursuant to subsection (b) or (c) of K.S.A. 59-~~2954~~ *29b10* and amendments thereto not later than the close of business of the first day that the district court is open for the transaction of business after the admission date of the person, unless a district court orders that such person remain in custody under an ex parte emergency custody order issued pursuant to the provisions of K.S.A. 59-~~2958~~ *20b14* and amendments thereto, or a temporary custody order issued pursuant to the provisions of K.S.A. 59-~~2959~~ *29b15* and amendments thereto.

Sec 13

59-~~2957~~ Petition for ~~determination~~ *treatment* of ~~mental illness~~ *an alcohol or substance abuse problem*; request for ex parte emergency custody order; content. (a) A verified petition to determine whether or not a person is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act may be filed in the district court of the county wherein that person resides or wherein such person may be found.

(b) The petition shall state:

(1) The petitioner's belief that the named person is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment and the facts upon which this belief is based;

(2) to the extent known, the name, age, present whereabouts and permanent address of the person named as possibly a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment; and if not known, any information the petitioner might have about this person and where the person resides;

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

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

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

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

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

(8) The name and address of the treatment facility to which the petitioner recommends that the proposed patient be sent for treatment if the proposed patient is found to be a person with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment under this act, or if the petitioner is not able to recommend a treatment facility to the court, then that fact and that the secretary of social and rehabilitation services has been notified and requested to determine which treatment facility the proposed patient should be sent to.

(c) The petition shall be accompanied by:

(1) A signed certificate from a physician, ~~licensed~~ psychologist, or ~~qualified mental health professional designated by the head of a participating health center~~ *state certified alcohol and substance abuse counselor* stating that such professional has personally examined the person and any available records and has found that the person, in such professional's opinion, is likely to be a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act, unless the court allows the petition to be accompanied by a verified statement by the petitioner that the petitioner had attempted to have the person seen by a physician, ~~licensed~~ psychologist or ~~such qualified mental health~~

~~professional;~~ *state certified alcohol and substance abuse counselor*, but that the person failed to cooperate to such an extent that the examination was impossible to conduct;

(2) ~~if applicable because immediate admission to a state psychiatric hospital is sought, the necessary statement from a qualified mental health professional authorizing admission~~ *a statement of consent to the admission of the proposed patient to the treatment facility named by the petitioner pursuant to subsection (b)(8) signed by the head of that treatment facility or other documentation which shows the willingness of the treatment facility to admitting the proposed patient for care and treatment*; and

(3) if applicable, a copy of any notice given pursuant to K.S.A. 59-~~2951~~ *29b07* and amendments thereto in which the named person has sought discharge from a treatment facility into which they had previously entered voluntarily, or a statement from the treating physician or ~~licensed~~ psychologist that the person ~~is~~ *was admited as* a voluntary patient but *now lacks capacity to make an informed decision concerning treatment and* is refusing reasonable treatment efforts, and including a description of the treatment efforts being refused.

(d) The petition may include a request that an ex parte emergency custody order be issued pursuant to K.S.A. 59-~~2959~~ *29b14* and amendments thereto. If such request is made the petition shall also include:

(1) A brief statement explaining why the person should be immediately detained or continue to be detained;

(2) the place where the petitioner requests that the person be detained or continue to be detained; *and*

(3) if applicable, because detention is requested in a ~~treatment~~ facility other than ~~a state psychiatric hospital~~ *the detox unit at either Osawatomie state hospital or at Larned state hospital*, a statement that the facility is willing to accept and detain such person; ~~and~~

~~(4) if applicable, because admission to a state psychiatric hospital is sought, the necessary statement from a qualified mental health professional authorizing admission and emergency care and treatment.~~

(e) The petition may include a request that a temporary custody order be issued pursuant to K.S.A. 59-~~2959~~ *29b15* and amendments thereto.

Sec 14

59-~~2958~~ Ex parte emergency custody order. (a) At the time the petition for the determination of ~~mental illness~~ of whether a person is *a person with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment is filed, or any time thereafter prior to the trial upon the petition as provided for in K.S.A. 59-~~2965~~ *29b21* and amendments thereto, the petitioner may request in writing that the district court issue an ex parte emergency order including either or both of the following: (1) An order directing any law enforcement officer to take the person named in the order into custody and transport the person to a designated treatment facility or other suitable place willing to receive and detain the person; (2) an order authorizing any named treatment facility or other place to detain or continue to detain the person until the further order of the court or until the ex parte emergency custody order shall expire.

(b) ~~No ex parte emergency custody order shall provide for the detention of any person at a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such admission and detention at a state psychiatric hospital has been filed with the court.~~

~~(c)~~ No ex parte emergency custody order shall provide for the detention of any person in a non-medical facility used for the detention of persons charged with or convicted of a crime~~.~~ *unless*

~~(d) If~~ no other suitable facility at which such person may be detained is willing to accept the person~~, then the participating mental health center for that area shall provide a suitable place to detain the person until the further order of the court or until the ex parte emergency custody order shall expire~~.

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~~(e)~~ *(c)* An ex parte emergency custody order issued under this section shall expire at 5:00 p.m. of the second day the district court is open for the transaction of business after the date of its issuance, which expiration date shall be stated in the order.

~~(f)~~ *(d)* The district court shall not issue successive ex parte emergency custody orders.

~~(g)~~ *(e)* In lieu of issuing an ex parte emergency custody order, the court may allow the person with respect to whom the request was made to remain at liberty, subject to such conditions as the court may impose.

Sec 15

59-~~2959~~ Temporary custody order; request for; procedure. (a) At the time that the petition for determination of ~~mental illness~~ *whether a person is a person with an alcohol or substance abuse problem* is filed, or any time thereafter prior to the trial upon the petition as provided for in K.S.A. 59-~~2965~~ *29b21* and amendments thereto, the petitioner may request in writing that the district court issue a temporary custody order. The request shall state:

(1) The reasons why the person should be detained prior to the hearing on the petition;

(2) whether an ex parte emergency custody order has been requested or was granted; and

(3) the present whereabouts of the person named in the petition.

(b) Upon the filing of a request for a temporary custody order, the court shall set the matter for a hearing which shall be held not later than the close of business of the second day the district court is open for the transaction of business after the filing of the request. The petitioner and the person with respect to whom the request has been field shall be notified of the time and place of the hearing and that they shall each be afforded an opportunity to appear at the hearing, to testify and to present and cross-examine witnesses. If the person with respect to whom the request has been filed has not yet retained or been appointed an attorney, the court shall appoint an attorney for the person.

(c) At the hearing scheduled upon the request, the person with respect to whom the request has been filed shall be present unless the attorney for the person requests that the person's presence be waived and the court finds that the person's presence at the hearing would be injurious to the person's welfare. The court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the person at the hearing would be injurious to such person's welfare. However, if the person with respect to whom the request has

been filed states in writing to the court or to such person's attorney that such person wishes to be present at the hearing, the person's presence cannot be waived.

The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the person with respect to whom the request has been filed. All persons not necessary for the conduct of the proceedings may be excluded. The court shall receive all relevant and material evidence which may be offered. The rules governing evidentiary and procedural matters shall be applied to hearings under this section in a manner so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of issues with due regard to the interests of all parties. The facts or data upon which a dully qualified expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing and if of a type reasonably relied upon by experts in their particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence. The expert may testify in terms of opinion or inference and give the expert's reasons therefor without prior disclosure of the underlying facts or data unless the court requires otherwise. If requested on cross-examination, the expert shall disclose the underlying facts or data.

If the petitioner is not represented by counsel, the county or district attorney shall represent the petitioner, prepare all necessary papers, appear at the hearing and present such evidence as the county or district attorney determines to be of aid to the court in determining whether or not there is probable cause to believe that the person with respect to whom the request has been filed is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act, and that it would be in the best

interests of the person to be detained until the trial upon the petition.

(d) After the hearing, if the court determines from the evidence that:

(1) There is a probable cause to believe that the person with respect to whom the request has been filed is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act, and that it is in the best interests of the person to be detained until the trial upon the petition, the court shall issue a temporary custody order;

(2) there is probable cause to believe that the person with respect to whom the request has been filed is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act, but that it would not be in their best interests to be detained until the trial upon the petition, the court may allow the person to be at liberty, subject to such conditions as the court may impose;

(3) there is not probable cause to believe that the person with respect to whom the request has been filed is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act, the court shall terminate the proceedings and release the person.

(e) (1) A temporary custody order issued pursuant to this section may direct any law enforcement officer or any other person designated by the court to take the person named in the order into custody and transport them to a designated treatment facility, and authorize the designated treatment facility to detain and treat the person until the trial upon the petition.

(2) ~~No temporary custody order shall provide for the detention and treatment of any person at a state psychiatric hospital unless a written statement from a qualified mental health~~

~~professional authorizing such admission and detention at a state psychiatric hospital has been filed with the court.~~

~~(3)~~ No temporary custody order shall provide for the detention of any person in a nonmedical facility used for the detention of persons charged with or convicted of a crime~~.~~ *unless*

~~(4) If~~ no other suitable facility at which such person may be detained is willing to accept the person~~, then the participating mental health center for that area shall provide a suitable place to detain the person until the further order of the court or until the trial upon the petition~~.

Sec 16

59-~~2960~~ Preliminary orders; continuances and advancement of trial. (a) Upon the filing of the petition provided for in K.S.A. 59-~~2957~~ *29b13* and amendments thereto, the district court shall issue the following:

(1) An order fixing the time and place of the trial upon the petition. Such hearing, in the court's discretion, may be conducted in a courtroom, a treatment facility or at some other suitable place. The time fixed in the order shall in no event be earlier than 7 days or later than 14 days after the date of the filing of the petition. If a demand for a trial by jury is later filed by the proposed patient, the court may continue the trial and fix a new time and place of the trial at a time that may exceed beyond the 14 days but shall be fixed within a reasonable time not exceeding 30 days from the date of the filing of the demand.

(2) An order that the proposed patient appear at the time and place of the hearing and providing that the proposed patient's presence will be required at the hearing unless the attorney for the proposed patient shall make a request that the proposed patient's presence be waived and the court finds that the proposed patient's presence at the hearing would be injurious to the proposed patient's welfare. The order shall further provide that notwithstanding the foregoing provision, if the proposed patient requests in writing to the court or to such person's attorney that the proposed patient wishes to be present at the hearing, the proposed patient's presence cannot be waived.

(3) An order appointing an attorney to represent the proposed patient at all stages of the proceedings and until all orders resulting from such proceedings are terminated. The court shall give preference, in the appointment of this attorney, to any attorney who has represented the proposed patient in other matters if the court has knowledge of that prior representation. The

proposed patient shall have the right to engage an attorney of the proposed patient's own choice and, in such event, the attorney appointed by the court shall be relieved of all duties by the court.

(4) An order that the proposed patient shall appear at a time and place that is in the best interests of the patient where the proposed patient will have the opportunity to consult with the proposed patient's court-appointed attorney, which time shall be at least 5 days prior to the date set for the trial under K.S.A. 59-~~2965~~ *29b21* and amendments thereto.

(5) An order for ~~a mental~~ *an* evaluation as provided for in K.S.A. 59-~~2961~~ *29b17* and amendments thereto.

(6) A notice as provided for in K.S.A. 59-~~2963~~ *29b19* and amendments thereto.

(7) If the petition also contains allegations as provided for in K.S.A. 59-3009 and amendments thereto, those orders necessary to make a determination of the need for a legal guardian or conservator, or both, to act on behalf of the proposed patient. For these purposes, the trials required by K.S.A. 59-~~2965~~ *29b21* and K.S.A. 59-3013 and amendments thereto, may be consolidated.

(8) If the petitioner shall not have named a proposed treatment facility to which the proposed patient may be sent as provided for in K.S.A. 59-29b13(b)(8) and amendments thereto, but instead stated that the secretary of social and rehabilitation services has been notified and requested to determine which treatment facility the proposed patient should be sent to, then the court shall issue an order requiring the secretary, or the secretary's designee, to make that determination and to notify the court of the name and address of that treatment facility by such time as the court shall specify in the court's order.

(b) Nothing in this section shall prevent the court from granting an order of continuance,

for good cause shown, to any party for no longer than 7 days, except that such limitation does not apply to a request for an order of continuance made by the proposed patient or to a request made by any party if the proposed patient absents him or herself such that further proceedings can not be held until the proposed patient has been located. The court also, upon the request of any party, may advance the date of the hearing if necessary and in the best interests of all concerned.

Sec 17

59-~~2961~~ Order for ~~a mental~~ *an* evaluation; procedure. (a) The order for a ~~mental~~ *an* evaluation required by subsection (a)(5) of K.S.A. 59-~~2960~~ *29b16* and amendments thereto, shall be served in the manner provided for in a subsections (c) and (d) of K.S.A. 59-~~2963~~ *29b19* and amendments thereto. It shall order the proposed patient to submit to ~~a mental~~ *an* evaluation *to be conducted by a physician, psychologist or state certified alcohol and drug abuse counselor* and to undergo such other ~~evaluation~~ *medical examinations or evaluations* as may be designated by the court in the order, except that any proposed patient who is not subject to a temporary custody order issued pursuant to K.S.A. 59-~~2959~~ *29b15* and amendments thereto and who requests a hearing pursuant to K.S.A. 59-~~2962~~ *29b18* and amendments thereto, need not submit to such *evaluations or examinations* until that hearing has been held and the court finds that there is probable cause to believe that the proposed patient is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act. The evaluation may be conducted at a treatment facility, the home of the proposed patient or any other suitable place that the court determines is not likely to have a harmful effect on the welfare of the proposed patient. ~~A state psychiatric hospital shall not be ordered to evaluate any proposed patient, unless a written statement from a qualified mental health professional authorizing such an evaluation at a state psychiatric hospital has been filed with the court.~~

(b) At the time designated by the court in the order, but in no event later than 3 days prior to the date of the ~~hearing~~ *trial* provided for in K.S.A. 59-~~2965~~ *29b21* and amendments thereto, the examiner shall submit to the court a report, in writing, of the evaluation which report

also shall be made available to counsel for the parties at least 3 days prior to ~~such hearing~~ *the trial*. The report also shall be made available to the proposed patient and to whomever the patient directs, unless for good cause recited in the order, the court orders otherwise. Such report shall state that the examiner has made an examination of the proposed patient and shall state the opinion of the examiner on the issue of whether or not the proposed patient is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act and the examiner's opinion as to the least restrictive treatment alternative which will protect the proposed patient and others and allow for the improvement of the proposed patient if treatment is ordered.

Sec 18

59-~~2962~~ ~~Mental~~ *E*valuation; hearing in noncustodial circumstances.

Whenever a proposed patient who is not subject to a temporary custody order issued pursuant to K.S.A. 59-~~2959~~ *29b15* and amendments thereto requests a hearing pursuant to this section, a hearing shall be held within a reasonable time thereafter. The petitioner and the proposed patient shall be notified of the time and place of the hearing, afforded an opportunity to testify, and to present and cross-examine witnesses. The proposed patient shall be present at the hearing and the proposed patient's presence cannot be waived. All persons not necessary for the conduct of the proceedings may be excluded. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the welfare of the proposed patient. The court shall receive all relevant and material evidence which may be offered. If the petitioner is not represented by counsel, the county or district attorney shall represent the petitioner, prepare all necessary papers, appear at the hearing and present such evidence as the county or district attorney determines to be of aid to the court in determining whether or not there is probable cause to believe that the proposed patient is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act. If the court determines from the evidence that there is probable cause to believe that the proposed patient is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment, the court shall issue the order for ~~a mental~~ *an* evaluation; otherwise, the court shall terminate the proceedings.

Sec 19

~~59-2963~~ **Notice; contents.** (a) Notice as required by subsection (a)(6) of K.S.A. 59-~~2960~~ *29b16* and amendments thereto shall be given to the proposed patient named in the petition, the proposed patient's legal guardian if there is one, the attorney appointed to represent the proposed patient, the proposed patient's spouse or nearest relative and to such other persons as the court directs. ~~The notice shall also be given to the participating mental health center for the county where the proposed patient resides.~~

(b) The notice shall state:

(1) That a petition has been filed, alleging that the proposed patient is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act and requesting that the court order treatment;

(2) the date, time and place of the trial;

(3) the name of the attorney appointed to represent the proposed patient and the time and place where the proposed patient shall have the opportunity to consult with this attorney;

(4) that the proposed patient has a right to a jury trial if a written demand for such is filed with the court at least four days prior to the time set for trial; and

(5) that if the proposed patient demands a jury trial, the trial date may have to be continued by the court for a reasonable time in order to empanel a jury, but that this continuance will not exceed 30 days from the date of the filing of the demand.

(c) The court may order any of the following persons to serve the notice upon the proposed patient:

(1) The physician or psychologist currently administering to the proposed patient, if the physician or psychologist consents to doing so;

(2) the head of the ~~participating mental health center~~ *treatment facility where the proposed patient is being detained* or the designee thereof;

(3) the local health officer or such officer's designee;

(4) the secretary of social and rehabilitation services or the secretary's designee if the proposed patient is being ~~detained~~ *treated* at a state psychiatric hospital~~;~~ *pursuant to any provision of K.S.A. 59-2945, et. seq. and amendments thereto;*

(5) any law enforcement officer; or

(6) the attorney of the proposed patient.

(d) The notice shall be served personally on the proposed patient as soon as possible, but not less than ~~10~~ *6* days prior to the date of the ~~hearing~~ *trial*, and immediate return thereof shall be made to the court by the person serving notice. Unless otherwise ordered by the court, notice shall be served on the proposed patient by a nonuniformed person.

(e) Notice to all other persons may be made by mail or in such other manner as directed by the court.

Sec 20

59-~~2964~~ Continuance of hearings; order of referral for short-term treatment. (a) The patient at any time may request, in writing, that any further proceedings be continued for not more than ~~90 days~~ *3 months* so that the court may make an order of continuance and referral for short-term treatment. The written request must be acknowledged before a notary public or a judge of the district court. The patient may request successive orders of continuance and referral. Upon receipt of such a request, the court may order the patient referred for short-term treatment to a designated treatment facility for a *specified* period of time not to exceed ~~90 days~~ *3 months* from the date the ~~order is filed~~ *request is signed by the patient. An order of referral for short-term treatment shall be conditioned upon the consent of the head of that treatment facility to accepting the patient.* ~~No order may be issued for referral to a state psychiatric hospital, unless a written statement from a qualified mental health professional authorizing such admission and treatment at a state psychiatric hospital has been filed with the court.~~ The court may not issue an order of referral unless the attorney representing the patient has filed a statement, in writing, that the attorney has explained to the patient the nature of an order of referral and the right of the patient to have the further proceedings conducted as scheduled.

(b) If the patient's request for an order for referral for short-term treatment is made prior to the hearing required to be held pursuant to the provisions of K.S.A. 59-~~2959~~ *29b15* or 59-~~2962~~ *29b18* and amendments thereto, and granted, it shall constitute a waiver of the patient's right to this hearing.

(c) Within any order of continuance and referral, the court shall confirm the new date and time set for the trial and direct that ~~notice of such~~ *a copy of the court's order shall* be given

to the patient, to the attorney representing the patient, the petitioner or the county or district attorney as appropriate, the patient's legal guardian if there is one, the patient's spouse or nearest relative as appropriate, the head of the treatment facility to which the patient is being referred, and such other persons as the court directs. Any trial so continued shall then be held on the date set at the end of the referral period, unless again continued by the court upon the patient's request for another order of continuance and referral, or on the date set in any order of continuance necessitated by the patient's demand for a jury trial.

(d) Not later than 14 days prior to the date set for the trial provided for in K.S.A. 59-~~2965~~ *29b21* and amendments thereto by any order of continuance and referral, unless the proposed patient has been accepted as a voluntary patient by the treatment facility or unless the proposed patient has filed a written request for another successive period of continuance and referral, the facility treating the proposed patient shall submit a written report of its findings and recommendations to the court, which report also shall be made available to counsel for the parties. The report also shall be made available to the proposed patient and to whomever the patient directs, unless for good cause recited in the order, the court orders otherwise.

Sec 21

59-~~2965~~ Trial upon the petition; procedure. (a) Trial upon the petition shall be held at the time and place specified in the court's order issued pursuant to subsection (a) of K.S.A. 59-~~2960~~ *29b16* and amendments thereof unless a continuance as provided in K.S.A. 59-~~2960~~*29b16* or 59-~~296~~*29b20* and amendments thereto, has been granted. The hearing shall be held to the court only, unless the proposed patient, at least 4 days prior to the time set for the hearing, demands, in writing, a jury trial.

(b) The jury, if one is demanded, shall consist of 6 persons. The jury panel shall be selected as provided by law. Notwithstanding the provision within K.S.A. 43-166 otherwise, a panel of prospective jurors may be assembled by the clerk upon less than 20 days notice in this circumstance. From such panel 12 qualified jurors, who have been passed for cause, shall be empaneled. Prior service as a juror in any court shall not exempt, for that reason alone, any person from jury service hereunder. From the panel so obtained, the proposed patient or the proposed patient's attorney shall strike one name; then the petitioner, or the petitioner's attorney, shall strike one name; and so on alternatively until each has stricken 3 names so as to reach the jury of 6 persons. During this process, if either party neglects or refuses to aid in striking the names, the court shall strike a name on behalf of such party.

(c) The proposed patient shall be present at the hearing unless the attorney for the proposed patient requests that the proposed patient's presence be waived and the court finds the person's presence at the hearing would be injurious to their welfare. The court shall enter in the record of the proceedings the facts upon which the court has found that the presence of the proposed patient at the hearing would be injurious to their welfare. However, if the proposed patient states in writing to the court or such person's attorney that such patient wishes to be

present at the hearing, the person's presence cannot be waived. The petitioner and the proposed patient shall be afforded an opportunity to appear at the hearing, to testify, and to present and cross-examine witnesses. All persons not necessary for the conduct of the proceedings may be excluded. The hearings shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the welfare of the proposed patient. The court shall receive all relevant and material evidence which may be offered, including the testimony or written findings and recommendations of the examiner who evaluated the proposed patient pursuant to the court's order issued under K.S.A. 59-~~2961~~*29b17* and amendments thereto. Such evidence shall not be privileged for the purpose of this hearing.

(d) The rules governing evidentiary and procedural matters at hearings under this section shall be applied in a manner so as to facilitate informal, efficient presentation of all relevant, probative evidence and resolution of issues with due regard to the interests of all parties.

(e) If the petitioner is not represented by counsel, the county or district attorney shall represent the petitioner, prepare all necessary papers, appear at the hearing and present such evidence as the county or district attorney shall determine to be of aid to the court in determining whether or not the proposed patient is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act.

Sec 22

59-~~2966~~ Order for treatment; dismissal. (a) Upon the completion of the trial, if the court or jury finds by clear and convincing evidence that the proposed patient is a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act, the court shall order treatment for such person *for a specified period of time not to exceed 3 months from the date of the trial* at a treatment facility~~;~~. ~~except that the court shall not order treatment at a state psychiatric hospital, unless a written statement from a qualified mental health professional authorizing such treatment at a state psychiatric hospital has been filed with the court.~~ An order for treatment in a treatment facility ~~other than a state psychiatric hospital~~ shall be conditioned upon the consent of the head of that treatment facility to accepting the patient. In the event no ~~other~~ appropriate treatment facility has agreed to provide treatment for the patient, ~~and no qualified mental health professional has authorized treatment at a state psychiatric hospital, the participating mental health center for the county in which the patient resides shall be given responsibility for providing or securing treatment for the patient or if no county of residence can be determined for the patient,~~ then the *secretary of social and rehabilitation services* ~~participating mental health center for the county in which the patient was taken into custody or in which the petition was filed~~ shall be given responsibility for providing or securing treatment for the patient.

(b) ~~Within any order for treatment the court shall specify the period of treatment as provided for in K.S.A. 1996 Supp. 59-2969 and amendments thereto.~~ A copy of the order for treatment shall be provided to the head of the treatment facility.

(c) When the court orders treatment, it shall retain jurisdiction to modify, change or terminate such order, unless venue has been changed pursuant to K.S.A. 59-~~2971~~*29b26* and amendments thereto and then the receiving court shall have continuing jurisdiction.

(d) If the court finds from the evidence that the proposed patient has not been shown to be a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act the court shall release the person and terminate the proceedings.

Sec 33

59-~~2967~~ **Order for outpatient treatment; revocation; reviews.** (a) An order for outpatient treatment may be entered by the court at any time in lieu of any type of order which would have required inpatient care and treatment if the court finds that the patient is likely to comply with an outpatient treatment order and that the patient will not likely be a danger to the community or be likely to cause harm to self or others while subject to an outpatient treatment order.

(b) No order for outpatient treatment shall be entered unless the head of the outpatient treatment facility has consented to treat the patient on an outpatient basis under the terms and conditions set forth by the court~~, except that no order for outpatient treatment shall be refused by a participating mental health center~~.

(c) If outpatient treatment is ordered, the order may state specific conditions to be followed by the patient, but shall include the general condition that the patient is required to comply with all directives and treatment as required by the head of the outpatient treatment facility or the head's designee. The court may also make such orders as are appropriate to provide for monitoring the patient's progress and compliance with outpatient treatment. Within any outpatient order for treatment the court shall specify the period of treatment as provided for in K.S.A. 59-~~2969~~*29b22(a) or 29b24(f)* and amendments thereto.

(d) The court shall retain jurisdiction to modify or revoke the order for outpatient treatment at any time on its own motion, on the motion of any counsel of record or upon notice from the treatment facility of any need for new conditions in the order for outpatient treatment or of material noncompliance by the patient with the order for outpatient treatment. However, if the venue of the matter has been transferred to another court, then the court having venue of the

matter shall have such jurisdiction to modify or revoke the outpatient treatment order. Revocation or modification of an order for outpatient treatment may be made ex parte by order of the court in accordance with the provisions of subsections (e) or (f).

(e) The treatment facility shall immediately report to the court any material noncompliance by the patient with the outpatient treatment order. Such notice may be verbal or by telephone but shall be followed by a verified written or facsimile notice sent to the court, to counsel for all parties and, as appropriate, to the head of the inpatient treatment facility designated to receive the patient, by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic communication was made to the court. Upon receipt of verbal, telephone, or verified written or facsimile notice of material noncompliance, the court may enter an ex parte emergency custody order providing for the immediate detention of the patient in a designated inpatient treatment facility ~~except that the court shall not order the detention of the patient at a state psychiatric hospital, unless a written statement from a qualified mental health professional authorizing such detention at a state psychiatric hospital has been filed with the court~~. Any ex parte emergency custody order issued by the court under this subsection shall expire at 5:00 p.m. of the second day the district court is open for the transaction of business after the patient is taken into custody. The court shall not enter successive ex parte emergency custody orders.

(f) (1) Upon the taking of a patient into custody pursuant to an ex parte emergency custody order revoking a previously issued order for outpatient treatment and ordering the patient to involuntary inpatient care the court shall set the matter for hearing not later than the close of business on the second day the court is open for business after the patient is taken into custody.

Notice of the hearing shall be given to the patient, the patient's attorney, the patient's legal guardian, the petitioner or the county or district attorney as appropriate, the head of the outpatient treatment facility and the head of the inpatient treatment facility, similarly as provided for in K.S.A. 59-~~2963~~*29b19* and amendments thereto.

(2) Upon the entry of an ex parte order modifying a previously issued order for outpatient treatment, but allowing the patient to remain at liberty, a copy of the order shall be served upon the patient, the patient's attorney, the county or district attorney and the head of the outpatient treatment facility similarly as provided for in K.S.A. 59-~~2963~~*29b19* and amendments thereto. Thereafter, any party to the matter, including the petitioner, the county or district attorney or the patient, may request a hearing on the matter if the request is filed within 5 days from the date of service of the ex parte order upon the patient. The court may also order such a hearing on its own motion within 5 days from the date of service of the notice. If no request or order for hearing is filed within the 5-day period, the ex parte order and the terms and conditions set out in the ex parte order shall become the final order of the court substituting for any previously entered order for outpatient treatment. If a hearing is requested, a formal written request for revocation or modification of the outpatient treatment order shall be filed by the county or district attorney or the petitioner and a hearing shall be held thereon within 5 days after the filing of the request.

(g) The hearing held pursuant to subsection (f) shall be conducted in the same manner as hearings provided for in K.S.A. 59-~~2959~~*29b15* and amendments thereto. Upon the completion of the hearing, if the court finds by clear and convincing evidence that patient violated any condition of the outpatient treatment order, the court may enter an order for inpatient treatment,

~~except that the court shall not order treatment at a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such treatment at a state psychiatric hospital has been filed with the court,~~ or may modify the order for outpatient treatment with different terms and conditions in accordance with this section.

(h) The outpatient treatment facility shall comply with the provisions of K.S.A. 59-~~296~~*29b24* and amendments thereto concerning the filing of written reports for each ~~90- or 180-day~~ period *of treatment* during the time ~~the~~ *any* outpatient treatment order is in effect and the court shall receive and process such reports in the same manner as reports received from an inpatient treatment facility.

~~59-2968. Admissions to a state psychiatric hospital; moratorium; procedure.~~ (a) ~~All admissions to a state psychiatric hospital upon any order of a court shall be to the state psychiatric hospital designated by the secretary of social and rehabilitation services. The time and manner of the admission shall be arranged by the participating mental health center authorizing such admission and coordinated with the hospital and the official or agent who shall transport the person.~~

~~(b) No patient shall be admitted to a state psychiatric hospital pursuant to any of the provisions of this act, including any court-ordered admissions, if the secretary has notified the supreme court of the state of Kansas and each district court which has jurisdiction over all or part of the catchment area served by a state psychiatric hospital, that the census of a particular treatment program of that state psychiatric hospital has reached capacity and that no more patients may be admitted. Following notification that a state psychiatric hospital program has reached its capacity and no more patients may be admitted, any district court which has jurisdiction over all or part of the catchment area served by that state psychiatric hospital, and any participating mental health center which serves all or part of that same catchment area, may request that patients needing that treatment program be placed on a waiting list maintained by that state psychiatric hospital.~~

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

~~section, the superintendent of the state psychiatric hospital shall inform the supreme court and each affected district court that the moratorium on admissions is no longer in effect.~~

Sec 24

59-~~2969~~ Hearing to review status of patient; procedure. (a) At least 14 days prior to the end of each period of treatment, as set out in the court order for such treatment, the head of the treatment facility furnishing treatment to the patient shall ~~submit to~~ *cause to be filed with* the court a written report summarizing the treatment provided and the findings and recommendations of the treatment facility concerning the need for further treatment for the patient. Upon the ~~receipt~~ *filing* of this written report, the court shall notify the patient's attorney of record that this written report has been ~~received~~ *filed*. If there is no attorney of record for the patient, the court shall appoint an attorney and notify such attorney that the written report has been filed.

(b) When the attorney for the patient has received notice that the treatment facility has ~~provided~~ *filed with* the district court ~~with~~ its written report, the attorney shall consult with the patient to determine whether the patient desires a hearing. If the patient desires a hearing, the attorney shall file a written request for a hearing with the district court, which request shall be filed not later than the ~~end of the 90-day or 180-day period of treatment as provided for herein~~ *last day ending any period of treatment as specified in the court's order for treatment issued pursuant to K.S.A. 49-29b22 or 29-29b23, and amendments thereto, or the court's last entered order for continued treatment issued pursuant to subsection (f)*. If the patient does not desire a hearing, the patient's attorney shall file with the court a written statement that the attorney has consulted with the patient; the manner in which the attorney has consulted with the patient; that the attorney has fully explained to the patient the patient's right to a hearing as set out in this section and that if the patient does not request such a hearing that further treatment will likely be ordered, but that having been so advised the patient does not desire a hearing. Thereupon, the

court may renew its order for treatment and may specify the next period of treatment *as provided for in subsection (f)*. A copy of the court's order shall be given to the patient, the attorney for the patient, the patient's legal guardian, the petitioner or the county or district attorney, as appropriate, and to the head of the treatment facility treating the patient as the court shall specify.

(c) Upon receiving a written request for a hearing, the district court shall set the matter for hearing and notice of such hearing shall be given similarly as provided for in K.S.A. 59-~~2963~~ *20b19* and amendments thereto. Notice shall also be given *promptly* to the head of the treatment facility treating the patient. The hearing shall be held as soon as reasonably practical, but in no event more than 10 days following the filing of the written request for a hearing. The patient shall remain in treatment during the pendency of any such hearing, unless discharged by the head of the treatment facility pursuant to K.S.A. 59-~~2973~~*29b27* and amendments thereto.

(d) The district court having jurisdiction of any case may, on its own motion or upon written request of any interested party, including the head of the treatment facility where a patient is being treated, hold a hearing to review the patient's status earlier than at the times set out in subsection (b) above, if the court determines ~~it is in the best interests of the patient~~ *that a material changes of circumstances has occurred necessitating the need* to have an earlier hearing, however, the patient shall not be entitled to have more than one hearing within ~~the first 90 days after the date of the hearing at which the original treatment order was entered; one hearing within the second 90 days after the date of the hearing at which the original treatment order was entered and one hearing within each 180 days thereafter~~ *each period of treatment as specified in any order for treatment, order for outpatient treatment or order for continued treatment.*

(e) The hearing shall be conducted in the same manner as hearings provided for in K.S.A. 59-~~2965~~*29b21* and amendments thereto, except that the hearing shall be to the court and the patient shall not have the right to demand a jury. At the hearing it shall be the petitioner's or county or district attorney's or treatment facility's burden to show that the patient remains a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act.

(f) Upon completion of the hearing, if the court finds by clear and convincing evidence that the patient continues to be a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act, the court shall order continued treatment *for a specified period of time not to exceed 3 months for any initial order for continued treatment, nor more than 6 months in any subsequent order for continued treatment,* at an inpatient treatment facility as provided for in K.S.A. 59-~~2966~~*29b22* and amendments thereto, or at an outpatient treatment facility if the court determines that outpatient treatment is appropriate under K.S.A. 59-~~2967~~*29b23* and amendments thereto, and a copy of the court's order shall be provided to the head of the treatment facility. If the court finds that it has not been shown by clear and convincing evidence that the patient continues to be a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act, it shall release the patient. A copy of the court's order of release shall be provided to the patient, the patient's attorney, the patient's legal guardian or other person known to be interested in the care and welfare of a minor patient, and to the head of the treatment facility at which the patient had been receiving treatment.

Sec 25

59-~~2970~~ **Transportation.** The court may issue orders providing for the transportation of patients as necessary to effectuate the provisions of this act. All orders of ex parte emergency custody, temporary custody, referral or treatment may authorize a relative or other suitable person to transport the individual named in the order to the place of detention or treatment specified in the order. All orders for transportation shall be served by the person transporting the individual named in the order upon the person in charge of the place of detention or treatment or such person's designee and due return of execution thereof shall be made to the court. A female being transported shall be accompanied by a female attendant, unless she is accompanied by an adult relative. An individual shall not be transported in a marked police car or sheriff's car if other means of transportation are available. The least amount of restraint necessary shall be used in transporting the patient.

Sec 26

~~59-2971~~ **Change of venue.** At any time after the petition provided for in K.S.A. 59-~~2957~~*29b13* and amendments thereto has been filed venue may be transferred in accordance with this section.

(1) Prior to trial required by K.S.A. 59-~~2965~~*29b21* and amendments thereto. Before the expiration of two full working days following the probable cause hearing held pursuant to K.S.A. 59-~~2959~~*29b15* or 59-~~2962~~*29b18* and amendments thereto, the district court then with jurisdiction, on its own motion or upon the written request of any person, may transfer the venue of the case to the district court of the county where the patient is being detained, evaluated or treated in a treatment facility under the authority of an order issued pursuant to K.S.A. 59-~~2958~~*29b14*, 59-~~2959~~*29b15* or 59-~~2964~~*29b20* and amendments thereto. Thereafter the district court may on its own motion or upon the written request of any person transfer venue to another district court only for good cause shown.

When an order changing venue is issued, the district court issuing the order shall immediately send to the district court to which venue is changed a facsimile of all pleadings and orders in the case. The district court shall also immediately send a facsimile of the order transferring venue to the treatment facility where the patient is being detained, evaluated or treated.

(2) After trial required by K.S.A. 59-~~2965~~*29b21* and amendments thereto, the district court may on its own motion or upon the written request of any person transfer venue to another district court for good cause shown. When an order changing venue is issued, the district court issuing the order shall immediately send to the district court to which venue is changed a facsimile of the petition for determination of ~~mental illness~~ *whether a person is a person*

with an alcohol or substance abuse problem subject to involuntary commitment for care and treatment, the most recent notice of hearing issued by the court, the order changing venue, the current order of treatment, the most recent written report summarizing treatment and any order allowing withdrawal of the patient's attorney. The transferring district court shall also immediately send a facsimile of the order transferring venue to the treatment facility where the patient is being detained, evaluated or treated. No later than 5:00 p.m. of the second full day the district court transferring venue is open for business following the issuance of the order transferring venue, the district court transferring venue shall send to the receiving district court the entire file of the case by restricted mail.

(b) The district court issuing an order transferring venue, if not in the county of residence of the proposed patient, shall transmit to the district court in the county of residence of the proposed patient a statement of any court costs incurred by the county of the district court issuing the order and, if the county of residence is not the receiving county, a certified copy of all pleadings and orders in the case.

(c) Any district court to which venue is transferred shall proceed in the case as if the petition had been originally filed therein and shall cause notice of the change of venue to be given to the persons named in and in the same manner as provided for in K.S.A. 59-~~2963~~*29b19* and amendments thereto. In the event that notice of a change of location of a hearing due to a change of venue cannot be served at least 48 hours prior to any hearing previously scheduled by the transferring court or because of scheduling conflicts the hearing can not be held by the receiving court on the previously scheduled date, then the receiving court shall continue the hearing for up to seven full working days to allow adequate time for notice to be given and the

hearing held.

(d) Any district court to which venue is transferred, if not in the county of residence of the patient, shall transmit to the district court in the county of residence of the patient a statement of any court costs incurred and a certified copy of all pleadings and orders entered in the case after transfer.

~~**59-2972. Transfer by secretary of social and rehabilitation services.** (a) The secretary of social and rehabilitation services or the secretary's designee may transfer any patient from any state psychiatric hospital under the secretary's control to any other state psychiatric hospital whenever the secretary or the secretary's designee considers it to be in the best interests of the patient. Except in the case of an emergency, the patient's spouse or nearest relative or legal guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall name the hospital to which the patient is proposed to be transferred to and state that, upon request of the spouse or nearest relative or legal guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer.~~

~~(b) The secretary of social and rehabilitation services or the designee of the secretary may transfer any involuntary patient from any state psychiatric hospital to any state institution for the mentally retarded whenever the secretary of social and rehabilitation services or the designee of the secretary considers it to be in the best interests of the patient. Any patient transferred as provided for in this subsection shall remain subject to the same statutory provisions as were applicable at the psychiatric hospital from which the patient was transferred and in addition thereto shall abide by and be subject to all the rules and regulations of the retardation institution to which the patient has been transferred. Except in the case of an emergency, the patient's spouse or nearest relative or legal guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall name the institution to which the patient is~~

~~proposed to be transferred to and state that, upon request of the spouse or nearest relative or legal guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer. No patient shall be transferred from a state psychiatric hospital to a state institution for the mentally retarded unless the superintendent of the receiving institution has found, pursuant to K.S.A. 76-12b01 through 76-12b11 and amendments thereto, that the patient is mentally retarded and in need of care and training and that placement in the institution is the least restrictive alternative available. Nothing in this subsection shall prevent the secretary of social and rehabilitation services or the designee of the secretary from allowing a patient at a state psychiatric hospital to be admitted as a voluntary resident to a state institution for the mentally retarded, or from then discharging such person from the state psychiatric hospital pursuant to K.S.A. 59-2973 and amendments thereto, as may be appropriate.~~

Sec 21

59-~~2973~~ Discharge. (a) When any proposed patient or involuntary patient has been admitted to any treatment facility pursuant to K.S.A. 59-~~2954~~*29b10*, 59-~~2958~~*29b14*, 59-~~295~~*29b15*, 59-~~2964~~*29b20*, 59-~~296~~*29b22* or 59-~~2967~~*29b23* and amendments thereto, the head of the treatment facility shall discharge and release the patient when the patient is no longer in need of treatment~~, except that no patient shall be discharged from a state psychiatric hospital without the hospital receiving and considering recommendations from the participating mental health center serving the area where the patient intends to reside.~~

(b) Nothing in this section shall be construed to amend or modify or repeal any law relating to the confinement of persons charged with or convicted of a criminal offense.

Sec 28

59-~~29674~~ **Notice of discharge.** The head of the treatment facility shall notify, in writing, the patient, the patient's attorney, the petitioner or the petitioner's attorney, the county or district attorney as appropriate, and the district court which has jurisdiction over the patient of the patient's discharge pursuant to K.S.A. 59-~~2973~~*29b27* and amendments thereto. When a notice of discharge is received, the court shall file the same which shall terminate the proceedings, unless there has been issued a superseding inpatient or outpatient treatment order not being discharged by the notice.

Sec 29

59-~~2975~~ **Unauthorized absence; procedure.** If any involuntary patient leaves the place of the patient's detention or treatment without the authority of the head of the treatment facility, the head of the treatment facility shall notify the sheriff of the county in which the treatment facility is located of the involuntary patient's unauthorized absence and request that the patient be taken into custody and returned to the treatment facility. If oral notification is given, it shall be confirmed in writing as soon thereafter as reasonably possible.

Sec 30

59-~~2976~~ **Administration of medications and other treatments.** (a) Medications and other treatments shall be prescribed, ordered and administered only in conformity with accepted clinical practice. Medication shall be administered only upon the written order of a physician or upon a verbal order noted in the patient's medical records and subsequently signed by the physician. The attending physician shall review regularly the drug regimen of each patient under the physician's care and shall monitor any symptoms of harmful side effects. Prescriptions for psychotropic medications shall be written with a termination date not exceeding 30 days thereafter but may by renewed.

(b) During the course of treatment the responsible physician or psychologist or such person's designee shall reasonably consult with the patient, the patient's legal guardian, or a minor patient's parent and give consideration to the views the patient, legal guardian or parent expresses concerning treatment and any alternatives. No medication or other treatment may be administered to any voluntary patient without the patient's consent, or the consent of such patient's legal guardian or of such patient's parent if the patient is a minor.

(c) Consent for medical or surgical treatments not intended primarily to treat a patient's ~~mental~~ *alcohol or substance abuse* disorder shall be obtained in accordance with applicable law.

(d) Whenever any patient is receiving treatment pursuant to K.S.A. 59-~~2954~~*29b10*, 59-~~2958~~*29b14*, 59-~~2959~~*29b15*, 59-~~2964~~*29b20*, 59-~~2966~~*29b22* or 59-~~2967~~*29b23* and amendments thereto, and the treatment facility is administering to the patient any medication or other treatment which alters the patient's mental state in such a way as to adversely affect the patient's judgment or hamper the patient in preparing for or participating in any hearing provided for by

this act, then two days prior to and during any such hearing, the treatment facility may not administer such medication or other treatment unless such medication or other treatment is necessary to sustain the patient's life or to protect the patient or others. Prior to the hearing, a report of all such medications or other treatment which have been administered to the patient, along with a copy of any written consent(s) which the patient may have signed, shall be submitted to the court. Counsel for the patient may preliminarily examine the attending physician regarding the administration of any medication to the patient within two days of the hearing with regard to the affect that medication may have had upon the patient's judgment or ability to prepare for or participate in the hearing. On the basis thereof, if the court determines that medication or other treatment has been administered which adversely affects the patient's judgment or ability to prepare for or participate in the hearing, the court may grant to the patient a reasonable continuance in order to allow for the patient to be better able to prepare for or participate in the hearing and the court shall order that such medication or other treatment be discontinued until the conclusion of the hearing, unless the court finds that such medication or other treatment is necessary to sustain the patient's life or to protect the patient or others, in which case the court shall order that the hearing proceed.

(e) Whenever a patient receiving treatment pursuant to K.S.A. 59-~~295~~*29b10*, 59-~~295~~*29b14*, 59-~~295~~*29b15*, 59-~~296~~*29b20*, 59-~~296~~*29b22* or 59-~~296~~*29b23* and amendments thereto, objects to taking any medication prescribed for ~~psychiatric~~ *such* treatment, and after full explanation of the benefits and risks of such mediation continues their objection, the medication may be administered over the patient's objection; except that the objection shall be recorded in the patient's medical record and at the same time written notice thereof shall be forwarded to the

medical director of the treatment facility or the director's designee. Within five days after receiving such notice, excluding Saturdays, Sundays and legal holidays, the medical director or designee shall deliver to the patient and the patient's physician the medical director's or designee's written decision concerning the administration of that medication, and a copy of that decision shall be placed in the patient's medical record.

(f) In no case shall experimental medication be administered without the patient's consent, which consent shall be obtained in accordance with subsection (a)(6) of K.S.A. 59-~~2978~~*29b32* and amendments thereto.

8-10

Sec 31

59-~~2977~~ **Restraints; seclusion.** (a) Restraints or seclusion shall not be applied to a patient unless it is determined by the head of the treatment facility or a physician or psychologist to be necessary to prevent immediate substantial bodily injury to the patient or others and that other alternative methods to prevent such injury are not sufficient to accomplish this purpose. Restraint or seclusion shall never be used as a punishment or for the convenience of staff. The extent of the restraint or seclusion applied to the patient shall be the least restrictive measure necessary to prevent such injury to the patient or others, and the use of restraint or seclusion in a treatment facility shall not exceed 3 hours without medical reevaluation, except that such medical reevaluation shall not be required, unless necessary, between the hours of 12:00 midnight and 8:00 a.m. When restraints or seclusion are applied, there shall be monitoring of the patient's condition at a frequency determined by the treating physician or psychologist, which shall be no less than once per each 15 minutes. The head of the treatment facility or a physician or psychologist shall sign a statement explaining the treatment necessity for the use of any restraint or seclusion and shall make such statement a part of the permanent treatment record of the patient.

(b) The provisions of subsection (a) shall not prevent, for a period not exceeding 2 hours without review and approval thereof by the head of the treatment facility or a physician or psychologist:

(1) ~~Staff at the state security hospital from confining patients in their rooms when it is considered necessary for security or proper institutional management;~~

(~~2~~) the use of such restraints as necessary for a patient who is likely to cause physical injury to self or others without the use of such restraints;

~~(3)~~*(2)* the use of restraints when needed primarily for examination or treatment or to insure the healing process; or

~~(4)~~*(3)* the use of seclusion as part of a treatment methodology that calls for time out when *the* patient is refusing to participate in a treatment or has become disruptive of a treatment process.

(c) "Restraints" means the application of any devices, other than human force alone, to any part of the body of the patient for the purpose of preventing the patient from causing injury to self or others.

(d) "Seclusion" means the placement of a patient, alone, in a room, where the patient's freedom to leave is restricted and where the patient is not under continuous observation.

Sec 32

59-~~2978~~ Rights of patients. (a) Every patient being treated in any treatment facility, in addition to all other rights preserved by the provisions of this act, shall have the following rights:

(1) To wear the patient's own clothes, keep and use the patient's own personal possessions including toilet articles and keep and be allowed to spend the patient's own money;

(2) to communicate by all reasonable means with a reasonable number of persons at reasonable hours of the day and night, including both to make and receive confidential telephone calls, and by letter, both to mail and receive unopened correspondence, except that if the head of the treatment facility should deny a patient's right to mail or to receive unopened correspondence under the provisions of subsection (b), such correspondence shall be opened and examined in the presence of the patient;

(3) to conjugal visits if facilities are available for such visits;

(4) to receive visitors in reasonable numbers and at reasonable times each day;

(5) to refuse involuntary labor other than the housekeeping of the patient's own bedroom and bathroom, provided that nothing herein shall be construed so as to prohibit a patient from performing labor as a part of a therapeutic program to which the patient has given their written consent and for which the patient receives reasonable compensation;

(6) not to be subject to such procedures as psychosurgery, electroshock therapy, experimental medication, aversion therapy or hazardous treatment procedures without the written consent of the patient or the written consent of a parent or legal guardian, if such patient is a minor or has a legal guardian provided that the guardian has obtained authority to consent to such from the court which has venue over the guardianship following a hearing held for that purpose;

(7) to have explained, the nature of all medications prescribed, the reason for the prescription and the most common side effects and, if requested, the nature of any other treatments ordered;

(8) to communicate by letter with the secretary of social and rehabilitation services, the head of the treatment facility and any court, attorney, physician, psychologist, or minister of religion, including a Christian Science practitioner. All such communications shall be forwarded at once to the addressee without examination and communications from such persons shall be delivered to the patient without examination;

(9) to contact or consult privately with the patient's physician or psychologist, minister of religion, including a Christian Science practitioner, legal guardian or attorney at any time and if the patient is a minor, their parent;

(10) to be visited by the patient's physician, psychologist, minister of religion, including a Christian Science practitioner, legal guardian or attorney at any time and if the patient is a minor, their parent;

(11) to be informed orally and in writing of their rights under this section upon admission to a treatment facility; and

(12) to be treated humanely consistent with generally accepted ethics and practices.

(b) The head of the treatment facility may, for good cause only, restrict a patient's rights under this section, except that the rights enumerated in subsections (a)(5) through (a)(12), and the right to mail any correspondence which does not violate postal regulations, shall not be restricted by the head of the treatment facility under any circumstances. Each treatment facility shall adopt regulations governing the conduct of all patients being treated in such treatment facility, which

regulations shall be consistent with the provisions of this section. A statement explaining the reasons for any restriction of a patient's rights shall be immediately entered on such patient's medical record and copies of such statement shall be made available to the patient or to the parent, or legal guardian if such patient is a minor or has a legal guardian, and to the patient's attorney. In addition, notice of any restriction of a patient's rights shall be communicated to the patient in a timely fashion.

(c) Any person willfully depriving any patient of the rights protected by this section, except for the restriction of such rights in accordance with the provisions of subsection (b) or in accordance with a properly obtained court order, shall be guilty of a class C misdemeanor.

Sec 33

~~59-2979~~ **Disclosure of records.** (a) The district court records, and any treatment records or medical records of any patient or former patient that are in the possession of any district court or treatment facility shall be privileged and shall not be disclosed except:

(1) Upon the written consent of (A) the patient or former patient, if an adult who has no legal guardian; (B) the patient's or former patient's legal guardian, if one has been appointed; or (C) a parent, if the patient or former patient is under 18 years of age, except that a patient or former patient who is 14 or more years of age and who was voluntarily admitted upon their own application made pursuant to subsection (b)(2)(B) of K.S.A. 59-~~2949~~*29b05* and amendments thereto shall have capacity to consent to release of their records without parental consent. The head of any treatment facility who has the records may refuse to disclose portions of such records if the head of the treatment facility states in writing that such disclosure will be injurious to the welfare of the patient or former patient.

(2) Upon the sole consent of the head of the treatment facility who has the records if the head of the treatment facility makes a written determination that such disclosure is necessary for the treatment of the patient or former patient.

(3) To any state or national accreditation agency or for a scholarly study, but the head of the treatment facility shall require, before such disclosure is made, a pledge from any state or national accreditation agency or scholarly investigator that such agency or investigator will not disclose the name of any patient or former patient to any person not otherwise authorized by law to receive such information.

(4) Upon the order of any court of record after a determination has been made by the court issuing the order that such records are necessary for the conduct of proceedings before the

court and are otherwise admissible as evidence.

(5) In proceedings under this act, upon the oral or written request of any attorney representing the patient, or former patient.

(6) ~~To appropriate administrative or professional staff of the department of corrections whenever patients have been administratively transferred to the state security hospital or other state psychiatric hospitals pursuant to the provisions of K.S.A. 75-5209 and amendments thereto. The patient's or former patient's consent shall not be necessary to release information to the department of corrections.~~

~~(7)~~ As otherwise provided for in this act.

(b) To the extent the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto are applicable to treatment records or medical records of any patient or former patient, the provisions of K.S.A. 65-5601 through 65-5605, inclusive, and amendments thereto shall control the disposition of information contained in such records.

(c) Willful violation of this section is a class C misdemeanor.

Sec 34

59-~~2980~~ **Civil and criminal liability.** Any person acting in good faith and without negligence shall be free from all liability, civil or criminal, which might arise out of acting pursuant to this act. Any person who for a corrupt consideration or advantage, or through malice, shall make or join in making or advise the making of any false petition, report or order provided for in this act shall be guilty of a class A misdemeanor.

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Sec 35

59-~~2981~~ Costs; payment by residence county, when. In each proceeding the court shall allow and order paid to any individual or treatment facility as part of the costs thereof a reasonable fee and expenses for any professional services ordered performed by the court pursuant to this act ~~other than those performed by any individual or hospital under the jurisdiction of the secretary of social and rehabilitation services~~, and including the fee of counsel for the patient when counsel is appointed by the court and the costs of the county or district attorney incurred in cases involving change of venue. Other costs and fees shall be allowed and paid as are allowed by law for similar services in other cases. The costs shall be taxed to the estate of the patient, to those bound by law to support such patient or to the county of the residence of the patient as the court having jurisdiction shall direct, except that if a proposed patient is found not to be a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment under this act, the costs shall not be assessed against such patient's estate but may at the discretion of the court be assessed against the petitioner or may be paid from the general fund of the county of the residence of the proposed patient. Any district court receiving a statement of costs from another district court shall forthwith approve the same for payment out of the general fund of its county except that it may refuse to approve the same for payment only on the ground that the patient is not a resident of that county. In such case it shall transmit the statement of costs to the secretary of social and rehabilitation services who shall determine the question of residence and certify the secretary's findings to each district court. Whenever a district court has sent a statement of costs to the district court of another county and such costs have not been paid within 90 days after the statement was sent, the district court that sent the statement may transmit such statement of costs to the secretary for

determination and certification as provided above. If the claim for costs is not paid within 30 days after such certification, an action may be maintained thereon by the claimant county in the district court of the claimant county against the debtor county. The findings made by the secretary of social and rehabilitation services as to the residence of the patient shall be applicable only to the assessment of costs. Any county of residence which pays from its general fund court costs to the district court of another county may recover the same in any court of competent jurisdiction from the estate of the patient or from those bound by law to support such patient, unless the court shall find that the proceedings in which such costs were incurred were instituted without probable cause and not in good faith.

Sec 34

59-~~2982~~ Notice of death of patients in treatment facilities. In the event of the death of a patient in a treatment facility, the head of the treatment facility shall immediately give notice of the date, time, place and cause of such death, to the extent known, to the nearest known relative of the patient, and, as appropriate, to the court having jurisdiction over the patient, the attorney for the patient, and to the county or district attorney and as otherwise provide for by law, to the coroner for the county in which the patient died.

Sec 37

59-~~2983~~ Applicability to persons in custody on criminal charges. Nothing in this act shall be construed to apply to any person alleged or thought to be a ~~mentally ill~~ person *with an alcohol or substance abuse problem* subject to involuntary commitment for care and treatment under this act who is in custody on a criminal charge, except with the consent of either the prosecuting attorney or trial court.

Sec 38

59-~~2984~~ Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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Judicial Council Testimony
on S.B. 536

House Judiciary Committee
March 18, 1998

In 1996, the Judicial Council and its Care and Treatment Committee proposed to the Legislature recodification of the Care and Treatment Act for Mentally Ill Persons. The original code had been enacted in 1965 and heavily amended over the years since. In 1995, it was again obvious that amendments to the law were necessary due to further advancements in medical science, increased patient's rights awareness and progress in the State's mental health reform initiative. The proposal made to the 1996 Legislature was overwhelmingly approved and since that time, judges, attorneys, treatment professionals and patient representatives have all reported that the new code has been well received and found to be a marked improvement over the prior law.

Since then, the Committee has worked both on model legal forms recommended for use with the new Care and Treatment Act for Mentally Ill Persons, and has also reviewed the current alcohol and drug abuse codes. Those codes were enacted in 1982 and 1984 and have remained largely unchanged with the exception of the amendments made when the alcohol and substance abuse units at the state hospitals were closed a couple of years ago. We now propose recodification of the alcohol and drug abuse codes as well.

The proposed new code is modeled upon our new Care and Treatment Act for Mentally Ill Persons. (K.S.A. 1997 Supp. 59-2945, et. seq.) It follows the same format and utilizes the same time frames and procedures. It is designed to compliment the Care and Treatment Act for Mentally Ill Persons, thus making it easy to use alone or in combination with the Mental Illness Code. Key

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features of the proposal are:

1. The two existing codes (one for alcohol and a second one for drug abuse) are combined into one code. Because the two codes are essentially identical and have often been used jointly, combining them makes it more convenient to file a single case.

2. Nonetheless, separate allegations can be made using the proposed code to file a civil commitment action based on either a distinct alcohol or substance abuse problem where appropriate.

3. Because the proposed code follows the same format, time frames and procedures of the Care and Treatment Act for Mentally Ill Persons, it is convenient for actions under each code to be combined into a single proceeding where appropriate.

4. Because it follows the same format, time frames and procedures of the Care and Treatment Act for Mentally Ill Persons, the proposed code should be easier to use for both non-attorneys and legal professionals already familiar with the Care and Treatment Act for Mentally Ill Persons. Once persons primarily associated with alcohol or substance abuse programs begin using the proposed code, it will be easier for those persons to understand the Mental Illness Code should they need to use it.

5. The proposed code permits law enforcement officers to determine whether to take a person into protective custody and to transport that person to a professional setting based upon investigation rather than being limited to personal observation as provided for in the current codes. (Sec. 9.)

6. The proposed code provides for outpatient treatment commitment orders which the

current codes do not include. Outpatient treatment orders are being requested more and more regularly. The proposed code also provides the means for revocation of those orders and return of the patient to inpatient care when appropriate. (Sec. 23.)

7. The proposed code provides for periodic reviews of a civilly committed patient's status and for the court ordered release of the patient if the patient does not continue to meet the legal criteria for involuntary commitment. (Sec. 24.) The current codes do not include such provisions, although they are undoubtedly Constitutionally mandated.

8. The proposed code uses a three part definition of the criteria for civil commitment which is similar in format to the definition used in the Mental Illness Code. (Sec. 2.) This makes the circumstances under which a person may be civilly committed in this state generally consistent between these laws.

9. The proposed code requires the petitioner to advise the court as to what treatment facility the proposed patient should be sent to. In the alternative, the Secretary of Social and Rehabilitative Services must be notified and required to advise the court of an appropriate treatment facility, so that the court is never left in a situation of determining that a patient needs treatment, but not knowing where to send the patient. (Sec. 13.) This situation can happen under the current codes.

The Committee proposes that the new code be placed in the probate section of the Kansas Statutes immediately following the Care and Treatment Act for Mentally Ill Persons and the civil commitment code for Sexually Violent Predators, so that they are all found at the same place in the statutes.

The intent of this proposal is to bring a harmony to the laws in these areas which often overlap, and to produce laws easily understood and capable of being utilized by the non-attorneys involved in these matters as well as the judges and lawyers who also handle the legal cases. This proposal really represents Part II of the task the Committee was given in 1992 to thoroughly review and make suggestions to the Legislature with regard to the care and treatment laws of this state.

Finally, S.B. 536 also makes various technical amendments to the Care and Treatment Act for Mentally Ill Persons for clarity and consistency with the new Alcohol and Substance Abuse Act. The only amendment made by the Senate was technical.

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(Revised 08/97)

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SEMNATE BILL 536 March 18, 1998

PROPOSED AMENDMENTS TO THE CARE AND TREATMENT ACT

Location in Bill	Amendment	Reason
Sec. 39, p. 32, *l.* 36	"now lacks . . ."	clarity
Sec. 40, p. 34, *l.* 1	"nevertheless"	clarity / consistency with A/SA code
Sec. 40, p. 34, *l.* 1	"place at"	the current word "facility" suggests the defined terms "treatment facility" (critical in A/SA code where also have a defined term "other facility for care and treatment")
Sec. 41, p. 34, *l.* 28	"may be"	clarity
Sec. 41, p. 34, *l.* 29	"subject to . . ."	consistency
Sec. 41, p. 35, *l.* 22	"involuntary"	technical error / missing word
Sec. 42, p. 35, *l.* 38	"subsection"	technical error
Sec. 43, p. 37, *l.* 3	"and, (8) . . ."	added because more and more often patients are being initially sent to treatment facilities other than state psychiatric hospitals
Sec. 43, p. 37, *l.* 11, 19, 34	"licensed"	"psychologist" is a defined term, meaning licensed
Sec. 43, p. 37, *l.* 24	"if admission . . ."	existing sentence deleted because is an unnecessary repeat of (b)(4) / new added for consistency with above / consistency with A/SA code
Sec. 43, p. 37, *l.* 35	"was admitted as"	clarity
Sec. 43, p. 37, *l.* 36	"now lacks . . ."	
Sec. 44, p. 38, *l.* 15	"whether . . ."	awkward language changed to be consistent with A/SA code
Sec. 45, p. 39, *l.* 11	"to be conducted by . . ."	clarity / patients advocates request to be clear does not include social worker
Sec. 45, p. 39, *l.* 13	"physical or other . . ."	clarity / consistency with A/SA code (critical there)

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Location in Bill	Amendment	Reason
Sec. 45, p. 39, *l.* 18	"evaluations"	technical (plural)
Sec. 45, p. 39, *l.* 29, 33	"trial" "the trial"	technical / clarity
Sec. 46, p. 40, *l.* 36	"six"	patients advocates request / consistency with 7 day trial provision in 59-2960
Sec. 46, p. 40, *l.* 37	"trial"	technical / clarity
Sec. 47, p. 41, *l.* 1	"three months"	easier to count
Sec. 47, p. 41, *l.* 7	"specified"	consistency
Sec. 47, p. 41, *l.* 8	"request is . . ."	consistency / effective date is changed to the date the patient signed the request for the patient's better understanding
Sec. 47, p. 41, *l.* 27	"a copy . . ."	consistency with other provisions of the code / treatment facilities request
Sec. 48, p. 42, *l.* 9	"for a specified period . . ."	consistency with new review provisions in 59-2969
Sec. 48, p. 42, *l.* 27	"within any . . ."	deleted / replaced above and in 59-2969
Sec. 49, p. 43, *l.* 16	citations	technical
Sec. 49, p. 45, *l.* 3	"period of treatment"	consistency
Sec. 49, p. 45, *l.* 4	"any"	clarity
Sec. 50, p. 45, *l.* 11	"cause to be . . ."	clarity / technical
Sec. 50, p. 45, *l.* 14, 15, 19	"filing" "filed" "filed with"	clarity / technical
Sec. 50, p. 45, *l.* 24	"last day . . ."	consistency with new provisions below
Sec. 50, p. 45, *l.* 36	"as provided . . ."	clarity
Sec. 50, p. 45, *l.* 40	"directs"	consistency

Location in Bill	Amendment	Reason
Sec. 50, p. 46, *l.* 1	"promptly"	clarity / treatment facility request
Sec. 50, p. 46, *l.* 13	"that a material . . ."	clarity / consistency with other provisions in the code
Sec. 50, p. 46, *l.* 19	"review hearing . . ."	clarity / consistency / eliminate the need for tracking from the original order
Sec. 50, p. 46, *l.* 32	"for a specified period . . ."	re-establish the current "90/90/180" day periods of treatment (removed above)

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ately detained or continue to be detained;

(2) the place where the petitioner requests that the person be detained or continue to be detained;

(3) if applicable, because detention is requested in a treatment facility other than a state psychiatric hospital, a statement that the facility is willing to accept and detain such person; and

(4) if applicable, because admission to a state psychiatric hospital is sought, the necessary statement from a qualified mental health professional authorizing admission and emergency care and treatment.

(e) The petition may include a request that a temporary custody order be issued pursuant to K.S.A. 1997 Supp. 59-2959 and amendments thereto.

Sec. 44. K.S.A. 1997 Supp. 59-2958 is hereby amended to read as follows: 59-2958. (a) At the time the petition for the determination of ~~mental illness of a~~ *whether a person is a mentally ill* person subject to involuntary commitment ~~for care and treatment~~ *under this act* is filed, or any time thereafter prior to the trial upon the petition as provided for in K.S.A. 1997 Supp. 59-2965 and amendments thereto, the petitioner may request in writing that the district court issue an ex parte emergency order including either or both of the following: (1) An order directing any law enforcement officer to take the person named in the order into custody and transport the person to a designated treatment facility or other suitable place willing to receive and detain the person; (2) an order authorizing any named treatment facility or other place to detain or continue to detain the person until the further order of the court or until the ex parte emergency custody order shall expire. for care and treatment

(b) No ex parte emergency custody order shall provide for the detention of any person at a state psychiatric hospital unless a written statement from a qualified mental health professional authorizing such admission and detention at a state psychiatric hospital has been filed with the court.

(c) No ex parte emergency custody order shall provide for the detention of any person in a nonmedical facility used for the detention of persons charged with or convicted of a crime.

(d) If no other suitable facility at which such person may be detained is willing to accept the person, then the participating mental health center for that area shall provide a suitable place to detain the person until the further order of the court or until the ex parte emergency custody order shall expire.

(e) An ex parte emergency custody order issued under this section shall expire at 5:00 p.m. of the second day the district court is open for the transaction of business after the date of its issuance, which expiration date shall be stated in the order.

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(f) The district court shall not issue successive ex parte emergency custody orders.

(g) In lieu of issuing an ex parte emergency custody order, the court may allow the person with respect to whom the request was made to remain at liberty, subject to such conditions as the court may impose.

Sec. 45. K.S.A. 1997 Supp. 59-2961 is hereby amended to read as follows: 59-2961. (a) The order for a mental evaluation required by subsection (a)(5) of K.S.A. 1997 Supp. 59-2960 and amendments thereto, shall be served in the manner provided for in subsections (c) and (d) of K.S.A. 1997 Supp. 59-2963 and amendments thereto. It shall order the proposed patient to submit to a mental evaluation *to be conducted by a physician ~~or psychologist~~* , psychologist or qualified mental health professional otherwise authorized by law to diagnose mental disorders and to undergo such other ~~evaluation as may be designated~~ *physical or other evaluations as may be ordered* by the court ~~in the order~~, except that any proposed patient who is not subject to a temporary custody order issued pursuant to K.S.A. 1997 Supp. 59-2959 and amendments thereto and who requests a hearing pursuant to K.S.A. 1997 Supp. 59-2962 and amendments thereto, need not submit to such ~~evaluation~~ *evaluations* until that hearing has been held and the court finds that there is probable cause to believe that the proposed patient is a mentally ill person subject to involuntary commitment for care and treatment under this act. The evaluation may be conducted at a treatment facility, the home of the proposed patient or any other suitable place that the court determines is not likely to have a harmful effect on the welfare of the proposed patient. A state psychiatric hospital shall not be ordered to evaluate any proposed patient, unless a written statement from a qualified mental health professional authorizing such an evaluation at a state psychiatric hospital has been filed with the court.

(b) At the time designated by the court in the order, but in no event later than ~~3~~ *three* days prior to the date of the ~~hearing~~ *trial* provided for in K.S.A. 1997 Supp. 59-2965 and amendments thereto, the examiner shall submit to the court a report, in writing, of the evaluation which report also shall be made available to counsel for the parties at least ~~3~~ *three* days prior to ~~such hearing~~ *the trial*. The report also shall be made available to the proposed patient and to whomever the patient directs, unless for good cause recited in the order, the court orders otherwise. Such report shall state that the examiner has made an examination of the proposed patient and shall state the opinion of the examiner on the issue of whether or not the proposed patient is a mentally ill person subject to involuntary commitment for care and treatment under the act and the examiner's opinion as to the least restrictive treatment alternative which will protect the proposed patient and others and allow for the improvement of the proposed patient if treatment is ordered.

Sec. 46. K.S.A. 1997 Supp. 59-2963 is hereby amended to read as

59-2972. Transfer by secretary of social and rehabilitation services. [See Revisor's Note] (a) ~~Except as provided in subsection (e),~~ the secretary of social and rehabilitation services or the secretary's designee may transfer any patient from any state psychiatric hospital under the secretary's control to any other state psychiatric hospital whenever the secretary or the secretary's designee considers it to be in the best interests of the patient. Except in the case of an emergency, the patient's spouse or nearest relative or legal guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall name the hospital to which the patient is proposed to be transferred to and state that, upon request of the spouse or nearest relative or legal guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer.

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(b) ~~Except as provided in subsection (e),~~ the secretary of social and rehabilitation services or the designee of the secretary may transfer any involuntary patient from any state psychiatric hospital to any state institution for the mentally retarded whenever the secretary of social and rehabilitation services or the designee of the secretary considers it to be in the best interests of the patient. Any patient transferred as provided for in this subsection shall remain subject to the same statutory provisions as were applicable at the psychiatric hospital from which the patient was transferred and in addition thereto shall abide by and be subject to all the rules and regulations of the retardation institution to which the patient has been transferred. Except in the case of an emergency, the patient's spouse or nearest relative or legal guardian, if one has been appointed, shall be notified of the transfer, and notice shall be sent to the committing court not less than 14 days before the proposed transfer. The notice shall name the institution to which the patient is proposed to be transferred to and state that, upon request of the spouse or nearest relative or legal guardian, an opportunity for a hearing on the proposed transfer will be provided by the secretary of social and rehabilitation services prior to such transfer. No patient shall be transferred from a state psychiatric hospital to a state institution for the mentally retarded unless the superintendent of the receiving institution has found, pursuant to K.S.A. 76-12b01 through 76-12b11 and amendments thereto, that the patient is mentally retarded and in need of care and training and that placement in the institution is the least restrictive alternative available. Nothing in this subsection shall prevent the sec-

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retary of social and rehabilitation services or the designee of the secretary from allowing a patient at a state psychiatric hospital to be admitted as a voluntary resident to a state institution for the mentally retarded, or from then discharging such person from the state psychiatric hospital pursuant to K.S.A. 1997 Supp. 59-2973 and amendments thereto, as may be appropriate.

~~(c) At all times, any person admitted to or detained at a state psychiatric hospital upon an application made pursuant to K.S.A. 1997 Supp. 59-2954, and amendments thereto, or an order issued pursuant to K.S.A. 1997 Supp. 59-2958, 59-2959, 59-2964, 59-2966 or 59-2969, and amendments thereto, and who is alleged to be or who has been determined to be a mentally ill person subject to involuntary commitment for care and treatment, as defined in subsection (f)(1)(B) of K.S.A. 1997 Supp. 59-2946, and amendments thereto, shall be kept in a separate secure facility or building and segregated at all times from any other patient alleged to be or who has been determined to be a mentally ill person subject to involuntary commitment for care and treatment, as defined in subsection (f)(1)(A) of K.S.A. 1997 Supp. 59-2946, and amendments thereto. The provisions of this subsection (c) shall be effective on the date of the issuance by the United States supreme court of an opinion in the case of *State of Kansas vs. LeRoy Hendricks*, case no. 95-1649, which holds the sexually violent predator act, K.S.A. 59-29a01 *et seq.*, unconstitutional and shall expire on June 30, 1998.~~

History: L. 1996, ch. 167, § 28; L. 1997, ch. 152, § 11; May 8.

Revisor's Note:

The effective date of the amendments to this section by L. 1997, ch. 152, § 11 (see subsection (c)) was contingent on the United States Supreme Court declaring the sexually violent predator act, 59-29a01 et seq., unconstitutional. The court upheld that act in the case of State of Kansas vs. LeRoy Hendricks, 65 U.S.L.W. 4564.

#4113

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Testimony on S.B 536

House Judiciary Committee
March 19, 1998

I am Ellen Piekalkiewicz, Director of Policy and Planning, representing the 30 licensed Community Mental Health Centers (CMHCs). CMHCs are the county's legally delegated authorities to manage public mental health care in Kansas. CMHCs function as the local mental health authorities. As such, the Kansas public mental health system is a relationship of shared governance between two governmental entities, the state and the counties.

The Association of Community Mental Heath Centers supports S.B. 536.

We are, however, requesting that an amendment be made in Section 45. Section 45, which amends K.S.A. 1997 Supp. 59-2921, in line 12 states that mental evaluations are "to be conducted by a physician or psychologist." We believe that if this new language is added, some Centers would decline to perform outpatient care and treatment mental evaluations, which would likely lead to a hospital admission of the proposed patient.

K.S.A. 59-2961 deals with the order for mental evaluation and related procedure, including provision for such mental evaluations to be carried out on an outpatient basis. Currently, Qualified Mental Health Professionals (QMHP) at Community Mental Health Centers (CMHCs) carry out such evaluations, which have been satisfactory to the court, and have sometimes resulted in outpatient commitment arrangements without necessity of hospital care. In our view, inserting the terms "physician or psychologist" represents a substantive and problematic change in the current mental illness care and treatment law. Some Centers do not have licensed psychologists on staff, and heavily book their psychiatrist time for medication management, and could not use them for care and treatment evaluations.

A QMHP is defined in K.S.A. 59-2946 as a physician or psychologist who is employed by a CMHC or who is providing services as a physician or psychologist under a contract with a CMHC, or a registered masters level psychologist or a licensed specialist social worker or a licensed master social worker or a registered nurse who has a specialty in psychiatric nursing, who is employed by a CMHC and who is acting under the direction of a physician or psychologist who is employed by, or under contract with, a CMHC.

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Memo To: House Judiciary Committee
From: James L. Germer, Executive Director
RE: SB-536 Care and Treatment Act For Persons With An Alcohol Or Substance Abuse Problem
Date: March 18, 1998

KAPS Information

Kansas Advocacy & Protective Services, Inc. ("KAPS") is a federally funded non-profit corporation which advocates for the rights of individuals with disabilities. Our Agency also has federal authority to serve as an independent agency to investigate claims of abuse or neglect involving persons with disabilities. Similar organizations exist in each state and territory of the United States. KAPS currently administers four (4) federal programs: 1) Protection & Advocacy For Persons With Developmental Disabilities ("PADD"); 2) Protection & Advocacy For Individuals With Mental Illness ("PAIMI"); Protection & Advocacy For Individual Rights ("PAIR"); and Protection & Advocacy for Assistive Technology ("PAAT"). Combined, these four programs authorize KAPS to serve any Kansan with a life-long disability. Unfortunately, our funding is not as broad as our authority. Therefore, KAPS sets annual priorities, taking into account input from the public, in order to target our efforts where we can assist the most individuals with disabilities. I have attached a list of our FY 1998 Priorities for your information. For those individuals with disabilities who we are unable to serve, KAPS maintains a centralized information and referral system to provide limited advice to the caller and referrals to other agencies who may be able to assist the person.

Comments Regarding SB-536

KAPS takes no position as to whether SB-536 should be recommended for passage by the Committee. We note that the SB-536 is substantially based on the Care and Treatment Act for Persons With Mental Illness. KAPS believes that additional procedural protections will be added to current law if the bill becomes law. However, there are several items that we would like to point out for the Committee's consideration for possible amendments to the current language because the bill may negatively impact some persons with mental illness.

First, there is a significant population of persons who are dually diagnosed with both alcohol or substance abuse problems and mental illness. We are concerned that there seems to be no coordination between the treatment system for persons with mental illness and the alcohol or

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substance abuse treatment system to manage the needs of persons who exhibit symptoms of both conditions. The treatment methodologies for persons with mental illness are oftentimes diametrically opposed to those used for treating alcohol or substance abuse problems. Appropriate medication management for a person with mental illness is of paramount importance. Consequently, the medication needs of persons who are dually diagnosed must be carefully managed. Professionals who treat the alcohol and substance abuse problem must be cognizant of the serious problems that can arise if a person with a mental illness is deprived of medications which have been carefully prescribed to manage the person's mental illness symptoms.

Second, under prior law, either a physician or licensed psychologist was required to sign the certificate which accompanied a petition for involuntary petition for treatment. The required certificate states that the physician or psychologist examined the individual and that he or she is likely to be a person with an alcohol or drug abuse problem. SB-536 adds a state certified alcohol and abuse counselor to the list of professionals who are authorized to sign the certificate. KAPS is concerned that a state certified alcohol and abuse counselor may lack the requisite training and experience to recognize whether a person is suffering from symptoms of mental illness. Once screened into the system, a person with mental illness may be deprived of psychotropic medication necessary to manage the person's mental illness symptoms. Even if the court later determines that the individual should be treated by a mental health facility rather than an alcohol or substance abuse facility, precious time without medication will have passed between the initial screening and the final hearing. Absent continuous medication, the person's mental illness symptoms may reach crisis levels.

Finally, SB-536 contains the same procedure that KAPS argued was unconstitutional when the Care and Treatment Act For Persons With Mental Illness was passed by this Committee two (2) years ago. SB-536 provides a guardian with authority to "voluntarily" commit their ward into treatment for up to two years without obtaining authority from the probate court to commit their ward each time the guardian believes treatment against the individual's will is appropriate. Once the guardian obtains the authority to "voluntarily" commit their ward pursuant to the Letters of Guardianship issued by the probate court, the authority is continuing for a two-year period. KAPS views this as seriously depriving the rights of those persons who are treated against their will without due process of law.

Thank you for the opportunity to address our concerns with your Committee. I will be happy to address any questions from members of the Committee.