

Approved: 2-3-98
Date

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY.

The meeting was called to order by Chairperson Tim Emert at 10:06 a.m. on February 2, 1998 in Room 514-S of the Capitol.

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

Committee staff present: Mike Heim, Legislative Research Department
Jerry Donaldson Legislative Research Department
Gordon Self, Revisor of Statutes
Mary Blair, Committee Secretary

Conferees appearing before the committee: Randy Hearrell, Kansas Judicial Council
Judge Sam Bruner, Johnson County District Court
John House, Kansas Judicial Council, Care & Treatment
Avisory Council
Jim Germer, Kansas Advocacy & Protective Services

Others attending: See attached list

The minutes of the 1/28 and 1/29 meetings were approved on a motion by Sen. Goodwin and second by Sen. Oleen. Carried.

Bill Introductions: The Chair briefly summarized requests for bill introduction(s). The following organization's or individual's bill request(s) passed unanimously as follows:

<u>Organization or Individual</u>	<u>Motion</u>	<u>Second</u>
Uniform Law Commission	Bond	Oleen
Ks. County & D.A. Assn	Pugh	Petty
Atty Gen. Child Protection Symposium	Goodwin	Petty
Natl Congress for Fathers and Children	Gilstrap	Bond
Lifesaver Interlock, Inc.	Bond	Gilstrap
Attorney General's Office (8 requests)	Goodwin	Bond
Kansas Parole Board	Oleen	Schraad
Judicial Administration	Harrington	Petty
Kansas State Asso. of Fire Chiefs	Bond	Goodwin
Gene Johnson for Judge Bullock	Schraad	Bond

SB 536 - Civil commitment relating to the care and treatment of the mentally ill and persons with alcohol or substance abuse problems

Conferee Hearrell briefly reviewed materials covering **SB 536** which he handed out to the Committee: a list of members of the Care and Treatment Committee (attachment 1); an italicized copy of the Care and Treatment Act paralleling the original (a study guide to show where changes were made) (attachment 2); and a memo showing proposed amendments to the Act. (attachment 3)

Conferee Bruner reviewed the historical progress of The Care and Treatment Act for Mentally Ill Persons and briefly described his Committee's work both on drafting model legal forms, and on recodification of the alcohol and drug abuse codes. He stated he endorsed **SB 536** (attachment 4)

Conferee House reiterated Conferee Bruner's statement that the first 38 sections of **SB 536** are proposed recodification of what are now two distinct codes, one for commitment and one for alcohol and drug abusers. He stated that the proposal is to combine the codes since they are identical in language but still allow for individual petitions to be filed in court. He covered nine key features in the new code and detailed the parallels between it and the new Care and Treatment Act for Mentally Ill persons. (see attachments 2 and 4) There was discussion and clarification by Conferee House on the law enforcement language in section 9, page 6 of **SB 536**. He then called attention to the proposed amendment handout, briefly describing its construct and covering, in further detail, the more substantive portions of it. (see attachment 3) No action was taken on the bill at this time since Committee needed time to review it.

Conferee Germer stated that his organization took no position on **SB 536**. He made several comments regarding the bill and suggested amendments to the current language. (attachment 5)

The meeting adjourned at 10:47 a.m. The next scheduled meeting is Tuesday, Feb. 3, 1998.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 2, 1998

NAME	REPRESENTING
Orville Cole	Sen. Tyson
John Reinhart	Lifesaver Interloc
Wicklynn Welsch	Budget
Andrew O'Rourke	SRS
James Clark	KCOAA
Chip Wheelen	Ks Psychiatric Soc.
John House	SRS/Judicial Council
Peddy M. Hearrell	Judicial Council
KATH R LANDIS	CRIMINAL SCIENCE Comm on Publication For KS
Michelle Rola	Kansas Advocacy & Protective Services
Jim Bermer	Kansas Advocacy & Protective Services
Carrie Ann Brown	KS Govt Consult
Mike Huttles	SRS
DeAnna Peter	Governor's Office
Christy Molzen	Judicial Council
Alex Johnson	KS ASAP Assn
Nancy Lindberg	AG
Gene M. Kralich	
Kathy Ponte	OJA

STJ
-98
att 1

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(Revised 08/97)

Senate Judiciary
2-2-98
att 1

2-2-98
Att. #2

**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.*

Senate Judiciary
2-2-98
Att. 2

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.~~

~~(c) "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~~

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 (c), 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

~~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. 59-295229b08 or K.S.A. 59-295729b13 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. 59-295429b10 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 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 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, Osawatomic state hospital, Rainbow mental health facility or Topeka state hospital.~~

~~(m)(1) “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.

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; writ-

ten 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 psychiatric 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 themselves; 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.

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.~~

See 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

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

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.

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.

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 admitted 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.~~

(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 filed 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.~~

Sae 1/6

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 Evaluation; 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 59-2964 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. 59-296129b17 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. 59-297129b26 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 23

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. 59-296929b22(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. 59-296329b19 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. 59-296329b19 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. 59-295929b15 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. 59-296929b24 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~~ *filing* of this written report, the court shall notify the patient's attorney of record that this written report has been received ~~filed~~ *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~~ *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. 59-296529b21 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. 59-296629b22 and amendments thereto, or at an outpatient treatment facility if the court determines that outpatient treatment is appropriate under K.S.A. 59-296729b23 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 24

59-2971

Change of venue. At any time after the petition provided for in K.S.A.

59-295729b13 and amendments thereto has been filed venue may be transferred in accordance with this section.

(1) Prior to trial required by K.S.A. 59-296529b21 and amendments thereto. Before the expiration of two full working days following the probable cause hearing held pursuant to K.S.A. 59-295929b15 or 59-296229b18 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. 59-295829b14, 59-295929b15 or 59-296429b20 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. 59-296529b21 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. 59-296329b19 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 27

59-2973

Discharge. (a) When any proposed patient or involuntary patient has

been admitted to any treatment facility pursuant to K.S.A. 59-295429b10, 59-295829b14, 59-295929b15, 59-296429b20, 59-296629b22 or 59-296729b23 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 be 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. 59-295429b10, 59-295829b14, 59-295929b15, 59-296429b20, 59-296629b22 or 59-296729b23 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. 59-295429b10, 59-295829b14, 59-295929b15, 59-296429b20, 59-296629b22 or 59-296729b23 and amendments thereto, objects to taking any medication prescribed for *psychiatric such* treatment, and after full explanation of the benefits and risks of such medication 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. 59-297829b32 and amendments thereto.

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. 59-294929b05 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.

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 317

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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PROPOSED AMENDMENTS TO THE CARE AND TREATMENT ACT

<u>Location in Bill</u>	<u>Amendment</u>	<u>Reason</u>
Sec. 39, p. 32, l. 35	“now lacks . . .”	clarity
Sec. 40, p. 33, l. 43	“nevertheless”	clarity
Sec. 40, p. 33, l. 43	“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. 27	“may be”	clarity
Sec. 41, p. 34, l. 28	“subject to . . .”	consistency
Sec. 41, p. 35, l. 21	“involuntary”	technical error / missing word
Sec. 42, p. 35, l. 37	“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. 10, 18, 33	“licensed”	“psychologist” is a defined term, meaning licensed
Sec. 43, p. 37, l. 23	“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” “now lacks . . .”	clarity
Sec. 44, p. 38, l. 14	“whether . . .”	Awkward language changed to be consistent with A/SA code
Sec. 45, p. 39, l. 10	“to be conducted by . . .”	clarity / patients advocates request to be clear does not include social worker
Sec. 45, p. 39, l. 10	“to be conducted”	clarity
Sec. 45, p. 39, l. 12	“physical or other . . .”	clarity / consistency with A/SA code (critical there)

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<u>Location in Bill</u>	<u>Amendment</u>	<u>Reason</u>
Sec. 45, p. 39, l. 17	“evaluations”	technical (plural)
Sec. 45, p. 39, l. 28, 32	“trial” “the trial”	technical / clarity
Sec. 46, p. 40, l. 35	“6”	patients advocates request / consistency with 7 day trial provision in 59-2960
Sec. 46, p. 40, l. 36	“trial”	technical / clarity
Sec. 47, p. 40, l. 43	“3 months”	easier to count
Sec. 47, p. 41, l. 6	“specified”	consistency
Sec. 47, p. 41, l. 7	“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. 26	“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. 26	“within any . . .”	deleted / replaced above and in 59-2969
Sec. 49, p. 43, l. 14	citations	technical
Sec. 49, p. 45, l. 2	“period of treatment”	consistency
Sec. 49, p. 45, l. 3	“any”	clarity
Sec. 50, p. 45, l. 10	“cause to be . . .”	clarity / technical
Sec. 50, p. 45, l. 13, 14, 18	“filing” “filed” “filed with”	clarity / technical
Sec. 50, p. 45, l. 23	“last day . . .”	consistency with new provisions below
Sec. 50, p. 45, l. 35	“as provided . . .”	clarity
Sec. 50, p. 45, l. 39	“directs”	consistency

<u>Location in Bill</u>	<u>Amendment</u>	<u>Reason</u>
Sec. 50, p. 45, l. 43	“promptly”	clarity / treatment facility / request
Sec. 50, p. 46, l. 12	“that a material . . .”	clarity / consistency with other provisions in the code
Sec. 50, p. 46, l. 18	“review hearing”	clarity / consistency / eliminate the need for tracking from the original order
Sec. 50, p. 46, l. 31	“for a specified period . . .”	re-establish the current “90/90/180” day periods of treatment (removed above)

59-2985. Issue of mental illness upon arrest of certain persons; proceedings. Whenever any person is taken into custody by an arresting officer and such officer has reasonable grounds to believe that such person has violated K.S.A. 21-3420, 21-3421, 21-3422, 21-3502, 21-3503, 21-3504, 21-3505, 21-3506, 21-3507, 21-3508, 21-3509, 21-3510, 21-3511, 21-3512, 21-3513, 21-3602 or 21-3603 and amendments thereto, the officer shall forthwith report such facts to the county or district attorney by a written report under oath, and the county or district attorney may submit such report to the judge of the district court. If the court finds from an examination of the report that there is evidence raising the issue of the mental illness of the person who was arrested, the court shall direct the county or district attorney to sign and file a petition to institute proceedings in accordance with the care and treatment act for mentally ill persons.

History: L. 1996, ch. 167, § 41; Apr. 18.

59-2986. Same; report of arresting officer confidential. The arresting officer’s report made pursuant to K.S.A. 1997 Supp. 59-2985 and amendments thereto shall not be available to inspection or copy by any persons other than the person arrested, that person’s attorney, the county or district attorney and the judge of the district court.

History: L. 1996, ch. 167, § 42; Apr. 18.

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**Judicial Council Testimony
on S.B. 536**

**Senate Judiciary Committee
February 2, 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.



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Memo To: Senate 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: February 2, 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 substance abuse treatment system to manage the needs of persons who exhibit symptoms of both

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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 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.



KAPS PRIORITIES FY 1998

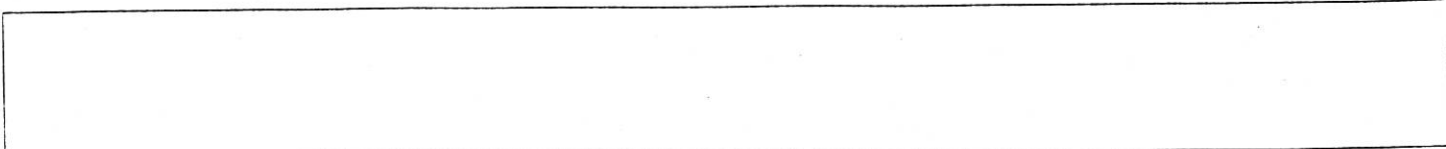
September 1997

KAPS Agency Wide Priorities

The following are the priorities that will be established for all of the programs that KAPS currently has available. The priorities are listed in no particular order. The numbers attached are used for identification purposes only. Listed below each priority are the strategies and activities that the agency expects to have to perform to obtain the desired outcomes. Throughout the year changes will be made to the activities/strategies listed. The staff will continuously monitor the effects of internal and external changes and plan new and/or different strategies/activities that may be needed to obtain the desired outcomes.

1. KAPS will provide services in a way that shows sensitivity toward personal dignity including respect for individual choice and expression.
 - 1). a). Revise client satisfaction surveys into rating for respect shown to client by KAPS staff.
 - b). Provide client satisfaction survey to clients when case is completed and every six months while case is pending.
 - c). Tabulate percentages of clients who believe KAPS staff treats them with respect (number of clients satisfied or positive - numerator, number of clients responding - denominator). Use information to establish benchmarks for future improvement goals.
 - 2). a). Revise intake interview procedure to make sure that KAPS inquires about desired consumer outcomes and records this information.
 - b). Tabulate percentages of intakes that include information about outcomes desired by consumers (number of intakes that have consumer outcomes noted - numerator, total consumer intakes - denominator). Use information to establish bench marks for future improvement goals.
 - 3). Devise a way to track whether individualized information, referral or advice to consumers, family members or guardians is good helpful information.
 - 4). a). Devise a post training evaluation form.
 - b). Provide evaluation forms to consumers, family members and guardians after training.
 - c). Tabulate percentages of training and education participants who have a positive response on the post training evaluation form (number of participants who have a positive re sponse - numerator, total number of participants trained - denominator). Use information to establish bench- marks for future improvement goals.

2. To insure that all consumers have access to and information on KAPS services.
 - 1). Update brochures with current priorities.
 - 2). Produce brochures in alternate formats and translations.



- 3). Establish a distribution network with other disability groups, cultural centers, nursing facilities, intermediate care facilities, hospitals and community health organizations.
 - 4). Establish a task force in Wichita and Dodge/Garden City area, that is cross cultural. This task force is to distribute information and help identify initiatives in the community.
 - 5). Research the possibility of holding a Disability Rights Forum for minority groups.
 - 6). Increase mailing list of the newsletters to double the current distribution.
 - 7). Coordinate Paimi Advisory Council Members visits to Nursing Facilities for Mental Health(NFMH) to provide information on KAPS services.
 - 8). Network with the DD Council and the University Affiliated Program(UAP) (DD Network).
 - 9). Create a webpage which includes information about KAPS, its services, priorities, legal rights information and links and or listings to other disability organizations.
3. Improve self advocacy effort by providing consumers information about their rights and the services available.
- 1). Revise the "Guide to the Rights of Kansans with Disabilities" on a yearly basis.
 - 2). Produce and distribute the guide.
 - 3). Provide trainings to Consumer Run Organizations. (CRO)
4. Insure that KAPS provides appropriate accommodations for potential clients to access KAPS services.
- 1). KAPS will develop and conduct an accessibility survey with consumers of its services.
 - 2). Tabulate percentages of barriers to KAPS' services removed (number of barriers eliminated - numerator, number of barriers identified by consumers - denominator). Use information to establish benchmarks for future improvement goals.
5. Insure that KAPS provides its services in a culturally sensitive way that reflects the needs of minority individuals with disabilities in Kansas.
- 1). KAPS staff will receive training on culturally competence issues with an emphasis on providing advocacy to minority individuals.
 - 2). Tabulate percentage of staff receiving training on cultural competence issues (number of staff trained - numerator, number of total staff - denominator) and (dollars spent on staff training on cultural competence - numerator, total dollars spent on staff training). Use information to establish benchmarks for future improvement goals.
6. Insure that KAPS' services are consumer driven and consumer responsive.
- 1). KAPS will have individuals with disabilities and minorities on its Board of Directors, its advisory councils and its staff. Tabulate percentage of individuals with disabilities and minorities on the Board of Directors, the advisory Councils and staff (number of individuals with disabilities on the Board, advisory council and staff - numerator, total number of people on the Board, advisory council and staff - denominator).
 - 2). KAPS will continue its existing advocacy collaboration with consumer disability advocacy groups. KAPS will also develop new advocacy partnerships with other consumer advocacy groups on issues important to individuals with disabili-



ties. Tabulate the increase in the number of partnerships with other advocacy groups (number of new partnerships with other consumer advocacy groups - numerator, total number of partnerships with other consumer advocacy groups - denominator).

Protection & Advocacy for Individuals with Mental Illness Priorities

1. Advocate for the right of individuals with disabilities to choose with whom and where they reside.
 - 1). Comment on Public Housing Authorities allocation plans, with an emphasis on elder only housing.
 - 2). Network with other organization that have an interest in housing issues.
 - 3). Investigate whether any Community Mental Health Centers (CMHC's) require individuals to live in CMHC housing in order to receive services.
 - 4). Investigate whether CMHC's require individuals to use the services of the CMHC in order to live in CMHC housing.
 - 5). Investigate housing complaints and follow appropriate procedure in attempting to resolve problems.
 - 6). Provide information about the landlord tenant act to consumers.

2. Within the resources of the agency, strive toward eliminating abuse and neglect of persons with mental illness.
 - 1). Refer all allegations of abuse and neglect to appropriate investigative agencies and review the investigation reports to determine whether they are thorough, accurate and complete.
 - 2). Investigate allegation of substantial abuse, neglect and exploitation that were not thoroughly investigated by other appropriate agencies.
 - 3). Provide comment to the state legislature on any proposed amendment to KAN. STAT. ANN. 39-1401-1442 (abuse, neglect and exploitation of adults statutes).

3. Promote the development of an environment within psychiatric hospitals where there is greater collaboration between physicians and involuntarily committed individuals so that the individuals have true collaboration regarding medication issues that arise in the course of their treatment.
 - 1). Educate the legislature about problems concerning KSA 59-2946(f)(1). To modify the clause that states that individuals who are involuntarily committed are per se incapable of making treatment decisions.
 - 2). Obtaining legislative interest.
 - 3). Educate the legislature about assuring that individuals who are involuntarily committed have greater participation regarding medication issues.
 - 4). Review individual cases to collect more data regarding how the system currently functions.
 - 5). Analyze and report data accumulated and widely disseminate the report to the

groups that would have benefit from the information.

4. Gather information on the appropriateness and adequacy of services with regard to discharge planning, and advocate for improvement where needed.
 - 1). Survey transfer patients to see if they have been contacted by CMHC's
 - 2). Establish a monitoring project in the NFMH's.
 - 3). Take cases involving movement from State Hospitals to NFMH's and publish the results to the judicial council.
 - 4). Take cases involving complaints about adequacy and/or appropriateness of services for PAIMI eligible clients in the community.

 5. Promote self advocacy pertaining to medication issues.
 - 1). Produce and distribute a brochure that educates individuals on the procedures to follow to when objecting to medication.
 - 2). Hold trainings at State Hospitals and NFMH's.
-