

MINUTES OF THE HOUSE JUDICIARY COMMITTEE

The meeting was called to order by Chairperson Michael O'Neal at 3:30 p.m. On March 20, 2001 in Room 313-S of the Capitol.

All members were present except:

Representative Andrew Howell - Excused

Committee staff present:

Jerry Ann Donaldson, Legislative Research Department

Jill Wolters, Revisor of Statutes Office

Cindy O'Neal, Committee Secretary

**HB 2549 - worthless check; damages**

Representative Dillmore made the motion to report HB 2549 favorably for passage. Representative Long seconded the motion. The motion carried.

**HB 2539 - allowing land surveyors to enter upon property for a land survey**

Representative DiVita made the motion to report HB 2539 favorably for passage. Representative DeCastro seconded the motion.

Representative Long made the substitute motion to add in new section 1, line 19 "if the surveyor has made the effort to get permission from the land owner". Representative Dillmore seconded the motion. The motion carried.

Representative Long made the motion to clarify that none of the changes in the bill would change the status as a occupant of the land. Representative Klein seconded the motion. The motion carried.

Representative Crow made the motion to strike "as such surveyor deems necessary". Representative Patterson seconded the motion. The motion carried.

Representative Pauls made the motion to strike the criminal immunity section of the bill. Representative Ruff seconded the motion. The motion failed.

Representative Loyd made the motion to report HB 2539 favorably for passage as amended. Representative Williams seconded the motion. The motion carried 11-6.

**SB 67 - driving under the influence, suspension of driving privileges**

Representative DiVita made the motion to amend in HB 2230 - suspension or revocation of driving privileges, as amended by the House Committee as a Whole, while preserving SB 67 and to clarify K.S.A. 8-1014 on a second or subsequent occurrence that the interlock device restrictions apply only to alcohol related convictions. Representative Loyd seconded the motion. The motion carried.

Representative Long made the motion to report SB 67 favorably for passage as amended. Representative DeCastro seconded the motion. The motion carried.

**SB 263 - collection of DNA specimens from persons convicted of person felonies**

Representative Klein made the motion to delete the requirement of any person with a person felony must submit DNA specimens and have it apply only to burglary & aggravated burglary. Representative Loyd seconded the motion. The motion carried.

Representative Klein made the motion to leave the current statute of limitations but add a one year after a conclusive DNA test exemption. Representative Loyd seconded the motion. The motion carried.

Representative Loyd made the motion to amend in HB 2360 - deduction of time spent in confinement. Representative Patterson seconded the motion. The motion carried.

Representative Long made the motion to amend on page 6, line 43 that “if the results of the DNA test are not unfavorably to the petitioner”. Representative DiVita seconded the motion. The motion carried.

Representative Loyd made the motion to amend in **HB 2075 - fingerprinting juveniles who allegedly commit assault**. Representative Long seconded the motion. The motion carried.

Representative Williams made the motion to amend in **HB 2344 - criminal disposal of firearms to a minor**, with the change in severity level from 4 to 6. Representative Long seconded the motion. The motion failed.

Representative Long made the motion to report **SB 263** favorably for passage as amended. Representative DiVita seconded the motion. The motion carried.

#### **SB 205 - period of no contact with victim as a condition of release**

Representative Pauls made the motion to amend in **HB 2077 - protection from abuse orders**, as passed by the House Committee as a Whole. Representative Swenson seconded the motion. There was concern that this would be mixing both criminal & civil statutes.

Representative Long made the substitute motion to have the court ensure the validity of protection from abuse orders. Representative Ruff seconded the motion.

By unanimous consent both the motions were withdrawn.

Representative Long made the motion to add the word “alleged” to “victim” everywhere it was appropriate. Representative Ruff seconded the motion. The motion carried.

Representative Long made the motion to report **SB 205** favorably for passage as amended. Representative DiVita seconded the motion. The motion carried.

#### **Substitute SB 36 - farm animal & field crop & research facilities protection act**

Representative Swenson made the motion to report **Substitute SB 36** favorably for passage. Representative Long seconded the motion.

Representative Klein made the substitute motion to delete section 4 of the bill. Representative Crow seconded the motion. The motion failed.

The motion to report **Substitute SB 36** carried.

#### **SB 195 - release of information in records of child care facilities**

Representative Rehorn made the motion to adopt his balloon amendment (Attachment 1). Representative Williams seconded the motion. The motion carried.

Representative DiVita made the motion to report **SB 195** favorably for passage as amended. Representative Rehorn seconded the motion. The motion carried.

#### **SB 119 - mental health screening and placement**

Representative Pauls made the motion to adopt the balloon amendment to take out references of liability and add community mental health centers under the tort claims act. (Attachment 2) Representative Ruff seconded the motion. The motion carried.

Representative Long made the motion to amend in **HB 2509 - guardian & volunteers included under the tort claims act**. Representative Pauls seconded the motion. The motion carried.

Representative Pauls made the motion to report **SB 119** favorably for passage as amended. Representative Long seconded the motion. The motion carried.

#### **SB 30 - invalidity of certain provisions of wills, trusts & other instruments when preparer is beneficiary**

Representative DiVita was concerned that there was no affirmative assurance that the person having the will drafted would have knowledge of what it said and made the motion to include it in the bill. Representative

Crow seconded the motion.

Representative Klein made the substitute motion to table the bill because he was not comfortable with it and not sure that he understood it completely. He then withdrew his motion.

The DiVita motion failed.

Representative Willams made the motion to report SB 30 favorably for passage. Representative Ruff seconded the motion. The motion carried. Representative DiVita requested she be recorded as voting no.

**SB 20 - eliminate bond requirements for professional fund-raiser for charitable organization**

Representative Long made the motion to report SB 20 favorably for passage. Representative Shriver seconded the motion. The motion carried.

**SB 291 - creating the crime of causing harm to another person by motor vehicle**

Representative Dillmore made the motion to report SB 291 favorably for passage. Representative Williams seconded the motion.

Representative DiVita was concerned about the definition of leaving a child unattended.

Representative Long made the motion to table the bill. Representative DiVita seconded the motion. The motion failed 8-8.

The motion to report SB 291 favorably failed 7-9.

**SB 209 - enacting the national crime prevention & privacy compact**

Representative Loyd made the motion to have the bill effective upon publication in the Kansas Registrar. Representative Pauls seconded the motion. The motion carried.

Representative Patterson made the motion to report SB 209 favorably for passage as amended. Representative Loyd seconded the motion. The motion carried.

**SB 14 - mediation; disputes which may be ordered to mediation costs**

Chairman O'Neal made the motion to change on page 2, line 10 to make the cost relative to the amount in controversy. Representative Long seconded the motion. The motion carried.

Chairman O'Neal made the motion to strike on line 12 the word "judicial". Representative Loyd seconded the motion. The motion carried.

Chairman O'Neal made the motion to strike on line 14 "approved by.....individual." Representative Loyd seconded the motion. The motion carried.

Representative Loyd made the motion to strike on page 2, line 31 "deliberate & intentional" and replace with "without just cause or excuse." Chairman O'Neal seconded the motion. The motion carried.

Representative Pauls made the motion to strike "the amount at controversy in the case". Representative DiVita seconded the motion. The motion carried.

Representative Long made the motion to report SB 14 favorably for passage as amended. Representative Crow seconded the motion. The motion carried.

The committee meeting adjourned at 7:00 p.m.



As Amended by Senate Committee

As Amended by Senate Committee

Session of 2001

SENATE BILL No. 195

SENATE BILL No. 195

By Committee on Public Health and Welfare

By Committee on Public Health and Welfare

1-31

1-31

12 AN ACT relating to child care records; concerning the confidentiality of  
13 information; amending K.S.A. 2000 Supp. ~~[65-502]~~ and 65-525 and  
14 repealing the existing section ~~[sections]~~.

65-503

; also repealing K.S.A. 65-502

16 Be it enacted by the Legislature of the State of Kansas:

17 Section 1. K.S.A. 2000 Supp. 65-525 is hereby amended to read as  
18 follows: 65-525. (a) ~~Information~~ Records in the possession of the depart-  
19 ment of health and environment received pursuant to K.S.A. 65-501 ~~et~~  
20 ~~seq.~~ or its agents regarding child care facilities, maternity centers or family  
21 day care homes shall not be released publicly in a manner that would  
22 identify individuals, unless required by law.

23 (b) Records containing the name, address and telephone number of  
24 a child care facility, maternity center or family day care home in the  
25 possession of the department of health and environment or its agents shall  
26 not be released publicly unless required by law.

27 (c) ~~Information~~ Records that cannot be released by subsection (a) or  
28 (b) may be released to: (1) An agency or organization authorized to re-  
29 ceive notice under K.S.A. 65-506, and amendments thereto; (2) a criminal  
30 justice agency; (3) any state or federal agency that provides child care  
31 services, funding for child care or provides child protective services; or  
32 (4) any federal agency for the purposes of compliance with federal fund-  
33 ing requirements; (5) any local fire department; (6) any child and adult  
34 care food program sponsoring agency; or (7) any local disaster agency.

35 (d) Any state or federal agency or any person receiving information  
36 records under subsection (a) or (b) shall not disseminate the information  
37 records without the consent of the person whose information records will  
38 be disseminated unless required by law. Any person, other than a state  
39 or federal agency, receiving information under subsection (a) or (b) shall  
40 not disseminate the information without the consent of the person whose  
41 name will be disseminated unless required by law. Any state or federal  
42 agency or any person receiving records under subsection (e) may disse-  
43minate the information contained in the records without the consent of the

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Attachment 1



1 person whose records will be disseminated.

2 (e) The secretary of health and environment may release the name,  
3 address and telephone number of a maternity center, child care facility  
4 or family day care home when the secretary determines that the release  
5 of the information is necessary to protect the health, safety or welfare of  
6 the public or the patients or children enrolled in the maternity center,  
7 child care facility or family day care ~~name~~ home.

8 (f) In any hearings conducted under the licensing or regulation pro-  
9 visions of K.S.A. 65-501 *et seq.* and amendments thereto, the hearing  
10 officer may close the hearing to the public to prevent public disclosure  
11 of matters relating to persons restricted by other laws.

12 ~~[Sec. 2. K.S.A. 2000 Supp. 65-502 is hereby amended to read~~  
13 ~~as follows: 65-502. As used in this act:~~

14 ~~[(a) "Child" means a person under 16 year of age.~~

15 ~~[(b) "Child care" means the care, supervision and guidance of a child~~  
16 ~~by a person other than the child's parent, guardian or custodian for a~~  
17 ~~period of time less than 24 hours per day on a regular basis, but does not~~  
18 ~~include care, supervision and guidance of a school age child by any of the~~  
19 ~~following:~~

20 ~~[(1) An instructional program for children who are attending a pro-~~  
21 ~~gram as provided under K.S.A. 2000 Supp. 72-8238, and amendments~~  
22 ~~thereto, administered by any of the following:~~

23 ~~[(A) A public or nonpublic school system accredited by the depart-~~  
24 ~~ment of education or the state board of regents; or~~

25 ~~[(B) a nonpublic school system, which is not accredited by the de-~~  
26 ~~partment of education or the state board of regents.~~

27 ~~[(2) A summer program established by the school board of a school~~  
28 ~~district as provided under K.S.A. 2000 Supp. 72-8237, and amendments~~  
29 ~~thereto.~~

30 ~~[(3) Short-term classes of less than two weeks' duration held between~~  
31 ~~school terms or during a break within a school term.~~

32 ~~[(4) A school age program operated not more than one day per week~~  
33 ~~by volunteers, which meets all of the following conditions:~~

34 ~~[(A) Not more than 11 children are served per volunteer;~~

35 ~~[(B) the program operates for less than four hours during any 24 hour~~  
36 ~~period; and~~

37 ~~[(C) the program is provided at no cost to a child's parent, guardian~~  
38 ~~or custodian.~~

39 ~~[(5) A school age program administered by a political subdivision of~~  
40 ~~the state which is primarily for recreational or social purposes and is~~  
41 ~~limited to children who are six years of age or older and attending school.~~

42 ~~[(6) An after school program continuously offered throughout the~~  
43 ~~school year to children who are at least six years of age and enrolled in~~

1 ~~school. The program must be provided with a nominal membership fee~~  
2 ~~or at no cost.~~

3 ~~[(7) A special activity program which meets less than four hours per~~  
4 ~~day for the sole purpose of the special activity. Special activity programs~~  
5 ~~include but are not limited to, music or dance classes, organized athletic~~  
6 ~~or sports programs, recreational classes, scouting programs and hobby or~~  
7 ~~craft clubs or classes.~~

8 ~~[(8) A nationally accredited camp.~~

9 ~~[(9) A structured school age program for the purpose of providing~~  
10 ~~therapeutic, rehabilitative or supervisory services to children under any~~  
11 ~~of the following:~~

12 ~~[(A) A purchase of service or managed care contract with the de-~~  
13 ~~partment; or~~

14 ~~[(B) an arrangement approved by a juvenile court order.~~

15 ~~[(c) "Maternity center" means a facility which provides delivery~~  
16 ~~services for normal, uncomplicated pregnancies but does not in-~~  
17 ~~clude a medical care facility as defined by K.S.A. 65-425 and~~  
18 ~~amendments thereto.~~

19 ~~[(d) "School age" means a child who has reached the legal age to~~  
20 ~~attend school.~~

21 ~~[New Sec. 3 Child care as defined in subsection (b) of section~~  
22 ~~2, and amendments thereto, shall not include:~~

23 ~~[(a) A child care center for sick children operated as part of a~~  
24 ~~pediatrics unit in a hospital licensed by the department of health~~  
25 ~~and environment, as defined pursuant to K.S.A. 65-425, and amend-~~  
26 ~~ments thereto; or~~

27 ~~[(b) child care provided on-site to children of parents residing~~  
28 ~~in an emergency, homeless or domestic violence shelter.]~~

29 ~~Sec. 2: [4.] K.S.A. 2000 Supp. 65-525 is [65-502, and 65-525 are]~~  
30 ~~hereby repealed.~~

31 ~~Sec. 3: [5.] This act shall take effect and be in force from and after~~  
32 ~~its publication in the statute book.~~

Insert Sec. 2. K.S.A. 2000 Supp. 65-503 (See attached)  
Renumber remaining sections accordingly  
65-503

Sec. 2.. K.S.A. 2000 Supp. 65-503 is hereby amended to read as follows: 65-503. As used in this act:

(a) "Child placement agency" means a business or service conducted, maintained or operated by a person engaged in finding homes for children by placing or arranging for the placement of such children for adoption or foster care.

(b) "Child care resource and referral agency" means a business or service conducted, maintained or operated by a person engaged in providing resource and referral services, including information of specific services provided by child care facilities, to assist parents to find child care.

(c) (1) "Child care facility" means:

(A) ~~A facility maintained by a person who has control or custody of one or more children under 16 years of age, unattended by parent or guardian, for the purpose of providing the children with food or lodging, or both, an individual who provides child care, except child care provided to children related to the person individual by blood, marriage or legal adoption within the fifth degree of kinship;~~

(B) a children's home, orphanage, maternity home, day care facility or other facility of a type determined by the secretary to require regulation under the provisions of this act;

(C) a child placement agency or child care resource and referral agency, or a facility maintained by such an agency for the purpose of caring for children under 16 years of age; or

(D) any receiving or detention home for children under 16 years of age provided or maintained by, or receiving aid from, any city or county or the state;

(E) a person who provides child care for children six years of age or older and in which any child attends 12 17 hours a week or more and for more than two consecutive weeks; or

(F) any person that provides child care and receives public funding for providing child care a person who provides child care for children six years of age or older if:

*(i) The program is offered for 16 hours a week or less;*

*(ii) no more than 11 children are served per staff or volunteer;*

*(iii) the program meets the fire safety and <sup>local</sup> local building requirements; and*

*(iv) the program is provided at no cost or with a nominal membership fee. A child care facility meeting the requirements of this paragraph is exempt from licensure.*

(2) "Child care facility" shall not include:



(A) A family day care home defined in K.S.A. 65-517 and amendments thereto;

(B) an instructional program for children as provided by K.S.A. 2000 Supp. 72-8238, and amendments thereto, administered by a board of education of any school district;

(C) an instructional program for only children six years of age or older for the purposes provided by subsection (e) of K.S.A. 2000 Supp. 72-8283, and amendments thereto, administered by a nonpublic school accredited by the state board of education;

(D) a summer instructional camp that is:

(i) Operated by a Kansas educational institution as defined in K.S.A. 2000 Supp. 74-32.120, and amendments thereto, or a postsecondary educational institution as defined in K.S.A. 2000 Supp. 74-3201b, and amendments thereto;

(ii) operated for not more than five weeks;

(iii) provides instruction to children, all of whom are 10 years of age or older; and

(iv) accredited by an agency or organization acceptable to the secretary of health and environment; or

(E) a summer program established by the school board of a school district as provided under K.S.A. 2000 Supp. 72-8237, and amendments thereto.

(d) "Person" means any individual, association, partnership, corporation, government, governmental subdivision or other entity.

(e) "Boarding school" means a facility which provides 24-hour care to school age children, provides education as its primary function, and is accredited by an accrediting agency acceptable to the secretary of health and environment.

(f) "Child" means an individual under 18 years of age or an individual under 21 years of age in the custody of a state agency pursuant to a juvenile court order.

(g) "Child care" means the care, supervision or guidance of a child by a person other than the child's parent or guardian.

(h) "Maternity center" means a facility which provides delivery services for normal, uncomplicated pregnancies but does not include a medical care facility as defined by K.S.A. 65-425, and amendments thereto.

# SENATE BILL No. 119

By Committee on Public Health and Welfare

1-24

Proposed floor amendment  
Association of Community Mental Health  
Centers

3-19-01

House Judiciary  
3-20-01  
Attachment 2

9 AN ACT concerning mental health; relating to screenings and place-  
10 ments; amending K.S.A. 22-3302, 22-3303, 22-3429, 22-3430, 38-1513,  
11 38-1514, 38-1614, 38-1637, 38-1638, 38-1639 and 38-1662, and K.S.A.  
12 2000 Supp. 22-3305 and 22-3431, and repealing the existing sections,

and 75-6115

13  
14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 22-3302 is hereby amended to read as follows: 22-  
16 3302. (1) At any time after the defendant has been charged with a crime  
17 and before pronouncement of sentence, the defendant, the defendant's  
18 counsel or the prosecuting attorney may request a determination of the  
19 defendant's competency to stand trial. If, upon the request of either party  
20 or upon the judge's own knowledge and observation, the judge before  
21 whom the case is pending finds that there is reason to believe that the  
22 defendant is incompetent to stand trial the proceedings shall be sus-  
23 pended and a hearing conducted to determine the competency of the  
24 defendant.

; also repealing K.S.A. 2000 Supp. 75-6102a

and 75-6102

25 (2) If the defendant is charged with a felony, the hearing to determine  
26 the competency of the defendant shall be conducted by a district judge.

27 (3) The court shall determine the issue of competency and may im-  
28 panel a jury of six persons to assist in making the determination. The  
29 court may order a psychiatric or psychological examination of the de-  
30 fendant. To facilitate the examination, the court may: (a) If the defendant  
31 is charged with a felony, commit the defendant to the state security hos-  
32 pital or to any appropriate county or private institution facility for ex-  
33 amination and report to the court, or, if the defendant is charged with a  
34 misdemeanor, commit the defendant to any appropriate state, county or  
35 private institution facility for examination and report to the court, except  
36 that the court shall not at no time commit the defendant to the a state  
37 security hospital or any other state institution psychiatric hospital other  
38 than the state security hospital in the case of a defendant charged with a  
39 felony, unless, prior to such commitment, the director of a local county  
40 or private institution recommends to the court and to the secretary of  
41 social and rehabilitation services that examination of the defendant should  
42 be performed at a state institution a written statement from a qualified  
43 mental health professional, as defined in K.S.A. 59-2946, and amendments

thereto, authorizing such admission to a state psychiatric hospital has  
 2 been filed with the court; (b) designate any appropriate psychiatric or  
 3 psychological clinic, mental health center or other psychiatric or psycho-  
 4 logical facility to conduct the examination while the defendant is in jail  
 5 or on pretrial release; or (c) appoint two qualified licensed physicians or  
 6 licensed psychologists, or one of each, to examine the defendant and  
 7 report to the court. If the court commits the defendant to ~~an institution~~  
 8 *a facility or state psychiatric hospital* for the examination, the commit-  
 9 ment shall be for not more than 60 days or until the examination is com-  
 10 pleted, whichever is the shorter period of time. No statement made by  
 11 the defendant in the course of any examination provided for by this sec-  
 12 tion, whether or not the defendant consents to the examination, shall be  
 13 admitted in evidence against the defendant in any criminal proceeding.  
 14 Upon notification ~~of to~~ the court that ~~a defendant committed for the~~  
 15 *results of any psychiatric or psychological examination as provided for*  
 16 ~~under this subsection has been found shown the defendant to be com-~~  
 17 ~~petent to stand trial, the court shall order that the defendant be returned~~  
 18 ~~not later than five days after receipt of the notice for proceedings under~~  
 19 ~~this section. If the defendant is not returned within that time, the county~~  
 20 ~~in which the proceedings will be held shall pay the costs of maintaining~~  
 21 ~~the defendant at the institution or facility or state psychiatric hospital for~~  
 22 ~~the period of time the defendant remains at the institution or facility or~~  
 23 ~~state psychiatric hospital in excess of the five-day period.~~

(4) ~~No qualified mental health professional who shall either make or~~  
 25 ~~decide not to make such a written statement authorizing admission to a~~  
 26 ~~state psychiatric hospital, nor the participating community mental health~~  
 27 ~~center at which that professional is employed or for which the professional~~  
 28 ~~is acting on behalf of, shall be liable to any person for this decision.~~

(5) If the defendant is found to be competent, the proceedings which  
 30 have been suspended shall be resumed. If the proceedings were sus-  
 31 pended before or during the preliminary examination, the judge who  
 32 conducted the competency hearing may conduct a preliminary exami-  
 33 nation or, if a district magistrate judge was conducting the proceedings  
 34 prior to the competency hearing, the judge who conducted the compe-  
 35 tency hearing may order the preliminary examination to be heard by a  
 36 district magistrate judge.

(5) (6) If the defendant is found to be incompetent to stand trial, the  
 37 court shall proceed in accordance with K.S.A. 22-3303, and amendments  
 38 thereto.

(6) (7) If proceedings are suspended and a hearing to determine the  
 39 defendant's competency is ordered after the defendant is in jeopardy, the  
 40 court may either order a recess or declare a mistrial.

(7) (8) The defendant shall be present personally at all proceedings

(5)

(6)

(7)



1 under this section.

2 Sec. 2. K.S.A. 22-3303 is hereby amended to read as follows: 22-  
3 3303. (1) A defendant who is charged with a felony and is found to be  
4 incompetent to stand trial shall be committed for evaluation and treat-  
5 ment to the state security hospital or to any appropriate county or private  
6 ~~institution~~ facility. A defendant who is charged with a misdemeanor and  
7 is found to be incompetent to stand trial shall be committed for evaluation  
8 and treatment to ~~any appropriate~~ a state, *psychiatric hospital or to any*  
9 *appropriate county or private institution facility, except that the court*  
10 *shall not commit the defendant to a state psychiatric hospital, unless a*  
11 *written statement from a qualified mental health professional, as defined*  
12 *in K.S.A. 2000 Supp. 59-2946, and amendments thereto, authorizing such*  
13 *admission to a state psychiatric hospital has been filed with the court.*  
14 Any such commitment shall be for a period of not to exceed 90 days.  
15 Within 90 days after the defendant's commitment ~~to such institution~~, the  
16 chief medical officer of ~~such institution~~ *the facility to which the defendant*  
17 *has been committed* shall certify to the court whether the defendant has  
18 a substantial probability of attaining competency to stand trial in the fore-  
19 seeable future. If such probability does exist, the court shall order the  
20 defendant to remain in ~~an~~ *that facility or another* appropriate state,  
21 county or private ~~institution~~ facility until the defendant attains compe-  
22 tency to stand trial or for a period of six months from the date of the  
23 original commitment, whichever occurs first, *except that the court shall*  
24 *at no time commit the defendant to a state psychiatric hospital other than*  
25 *the state security hospital in the case of a defendant charged with a felony,*  
26 *unless a written statement from a qualified mental health professional, as*  
27 *defined in K.S.A. 2000 Supp. 59-2946, and amendments thereto, author-*  
28 *izing such admission to a state psychiatric hospital has been filed with*  
29 *the court.* If such probability does not exist, the court shall order the  
30 secretary of social and rehabilitation services to commence involuntary  
31 commitment proceedings pursuant to article 29 of chapter 59 of the Kan-  
32 sas Statutes Annotated, and any amendments thereto.

33 ~~(2) [No qualified mental health professional who shall either make or~~  
34 ~~decide not to make such a written statement authorizing admission to a~~  
35 ~~state psychiatric hospital, nor the participating community mental health~~  
36 ~~center at which that professional is employed or for which the professional~~  
37 ~~is acting on behalf of, shall be liable to any person for this decision.~~

38 (3) If a defendant who was found to have had a substantial probability  
39 of attaining competency to stand trial, as provided in subsection (1), has  
40 not attained competency to stand trial within six months from the date  
41 of the original commitment, the court shall order the secretary of social  
42 and rehabilitation services to commence involuntary commitment pro-  
43 ceedings pursuant to article 29 of chapter 59 of the Kansas Statutes An-

1 notated, and ~~any~~ amendments thereto.

2 ~~(3) (4)~~ When reasonable grounds exist to believe that a defendant  
3 who has been adjudged incompetent to stand trial is competent, the court  
4 in which the criminal case is pending shall conduct a hearing in accord-  
5 ance with K.S.A. 22-3302, and amendments thereto to determine the  
6 person's present mental condition. Reasonable notice of such hearings  
7 shall be given to the prosecuting attorney, the defendant and the defend-  
8 ant's attorney of record, if any. If the court, following such hearing, finds  
9 the defendant to be competent, the proceedings pending against the de-  
10 fendant shall be resumed.

(3)

11 ~~(4) (5)~~ A defendant committed to a ~~public institution~~ *an inpatient*  
12 *treatment facility* under the provisions of this section who is thereafter  
13 sentenced for the crime charged at the time of commitment may be  
14 credited with all or any part of the time during which the defendant was  
15 committed and confined in such ~~public institution~~

(4)

facility

16 Sec. 3. K.S.A. 2000 Supp. 22-3305 is hereby amended to read as  
17 follows: 22-3305. (1) Whenever involuntary commitment proceedings  
18 have been commenced by the secretary of social and rehabilitation serv-  
19 ices as required by K.S.A. 22-3303, and amendments thereto, and the  
20 defendant is not committed to a treatment facility as a patient, the de-  
21 fendant shall remain in the ~~institution~~ *facility* where committed pursuant  
22 to K.S.A. 22-3303, and amendments thereto, and the secretary shall  
23 promptly notify the court and the county or district attorney of the county  
24 in which the criminal proceedings are pending of the result of the invol-  
25 untary commitment proceeding.

26 (2) Whenever involuntary commitment proceedings have been com-  
27 menced by the secretary of social and rehabilitation services as required  
28 by K.S.A. 22-3303, and amendments thereto, and the defendant is com-  
29 mitted to a treatment facility as a patient but thereafter is *appropriate* to  
30 be discharged pursuant to ~~the care and treatment act for mentally ill~~  
31 ~~persons~~ *article 29 of chapter 59 of the Kansas Statutes Annotated, and*  
32 *amendments thereto*, the defendant shall remain in ~~the institution~~ *treat-*  
33 *ment* where committed pursuant to ~~K.S.A. 22-3303 and amendments~~  
34 ~~thereto~~ *the care and treatment act for mentally ill persons*, and the head  
35 of the treatment facility shall promptly notify the court and the county or  
36 district attorney of the county in which the criminal proceedings are pend-  
37 ing that the defendant is *appropriate* to be discharged.

38 When giving notification to the court and the county or district attorney  
39 pursuant to subsection (1) or (2), the treatment facility shall include in  
40 such notification an opinion from the head of the treatment facility as to  
41 whether or not the defendant is now competent to stand trial. Upon  
42 request of the county or district attorney, the court may set a hearing on  
43 the issue of whether or not the defendant has been restored to compe-

1 tency. If no such request is made within 10 days after receipt of notice  
 2 pursuant to subsection (1) or (2), the court shall order the defendant to  
 3 be discharged from commitment and shall dismiss without prejudice the  
 4 charges against the defendant, and the period of limitation for the pros-  
 5 ecution for the crime charged shall not continue to run until the defend-  
 6 ant has been determined to have attained competency in accordance with  
 7 K.S.A. 22-3302, and amendments thereto.

8 Sec. 4. K.S.A. 22-3429 is hereby amended to read as follows: 22-  
 9 3429. (1) After conviction and prior to sentence and as part of the pre-  
 10 sentence investigation authorized by K.S.A. 21-4604, and amendments  
 11 thereto, or for crimes committed on or after July 1, 1993, a presentence  
 12 investigation report as provided in K.S.A. 21-4714, and amendments  
 13 thereto, the trial judge may order the defendant committed for mental  
 14 examination, evaluation and report. If the defendant is convicted of a  
 15 felony, the commitment shall be to the state security hospital or to any  
 16 ~~suitable local mental health~~ appropriate county or private facility, or if  
 17 the defendant is convicted of a misdemeanor, the commitment shall be  
 18 to a state psychiatric hospital or to any ~~suitable local mental health~~ ap-  
 19 propriate county or private facility, except that the court shall not commit  
 20 the defendant to a state psychiatric hospital other than the state security  
 21 hospital in the case of a defendant convicted of a felony, unless a written  
 22 statement from a qualified mental health professional, as defined in K.S.A.  
 23 2000 Supp. 59-2946, and amendments thereto, authorizing such admis-  
 24 sion to a state psychiatric hospital has been filed with the court.

25 (2) ~~No qualified mental health professional who shall either make or~~  
 26 ~~decide not to make such a written statement authorizing admission to a~~  
 27 ~~state psychiatric hospital, nor the participating community mental health~~  
 28 ~~center at which that professional is employed or for which the professional~~  
 29 ~~is acting on behalf of, shall be liable to any person for this decision.~~

30 (3) If adequate private facilities are available and if the defendant is  
 31 willing to assume the expense thereof, commitment may be to a private  
 32 hospital.

33 (4) A report of the examination and evaluation shall be furnished to (3)  
 34 the judge and shall be made available to the prosecuting attorney and  
 35 counsel for the defendant.

36 (5) A defendant may not be detained for more than 120 days under (4)  
 37 a commitment made under this section.

38 Sec. 5. K.S.A. 22-3430 is hereby amended to read as follows: 22-  
 39 3430. (a) If the report of the examination authorized by K.S.A. 22-3429,  
 40 and amendments thereto, shows that the defendant is in need of psychi-  
 41 atric care and treatment, that such treatment may materially aid in the  
 42 defendant's rehabilitation and that the defendant and society are not likely  
 43 to be endangered by permitting the defendant to receive such psychiatric



1 care and treatment, in lieu of confinement or imprisonment, the trial  
 2 judge shall have power to commit such defendant to: (1) The state se-  
 3 curity hospital or any county institution provided for the reception, care,  
 4 treatment and maintenance of mentally ill persons appropriate county or  
 5 private facility, if the defendant is convicted of a felony; or (2) any state  
 6 or county institution provided for the reception, care, treatment and  
 7 maintenance of mentally ill persons psychiatric hospital or appropriate  
 8 county or private facility, if the defendant is convicted of a misdemeanor,  
 9 except that the court shall not commit the defendant to a state psychiatric  
 10 hospital other than the state security hospital in the case of a defendant  
 11 convicted of a felony, unless a written statement from a qualified mental  
 12 health professional, as defined in K.S.A. 2000 Supp. 59-2946, and amend-  
 13 ments thereto, authorizing such admission to a state psychiatric hospital  
 14 has been filed with the court. The court may direct that the defendant be  
 15 detained in such hospital or institution treatment facility until further  
 16 order of the court or until the defendant is discharged under K.S.A. 22-  
 17 3431, and amendments thereto. No period of detention under this section  
 18 shall exceed the maximum term provided by law for the crime of which  
 19 the defendant has been convicted. The cost of care and treatment pro-  
 20 vided by a state institution psychiatric hospital shall be assessed in ac-  
 21 cordance with K.S.A. 59-2006, and amendments thereto.

22 (b) ~~No qualified mental health professional who shall either make or~~  
 23 ~~decide not to make such a written statement authorizing admission to a~~  
 24 ~~state psychiatric hospital, nor the participating community mental health~~  
 25 ~~center at which that professional is employed or for which the professional~~  
 26 ~~is acting on behalf of, shall be liable to any person for this decision.~~

27 (c) No defendant committed to the state security hospital pursuant  
 28 to this section upon conviction of a felony shall be transferred or released  
 29 from such hospital except on recommendation of the staff of such  
 30 hospital.

31 (e) ~~(d)~~ The defendant may appeal from any order of commitment  
 32 made pursuant to this section in the same manner and with like effect as  
 33 if sentence to a jail, or to the custody of the secretary of corrections had  
 34 been imposed.

35 Sec. 6. K.S.A. 2000 Supp. 22-3431 is hereby amended to read as  
 36 follows: 22-3431. (a) Whenever it appears to the chief medical officer of  
 37 the institution treatment facility to which a defendant has been commit-  
 38 ted under K.S.A. 22-3430, and amendments thereto, that the defendant  
 41 will not be improved by further detention treatment in such institution  
 42 facility, the chief medical officer shall give written notice thereof to the  
 43 district court where the defendant was convicted. Such notice shall in-  
 clude, but not be limited to: (1) Identification of the patient; (2) the course  
 of treatment; (3) a current assessment of the defendant's psychiatric con-

(c)

1 dition; (4) recommendations for future treatment, if any; and (5) rec-  
2 ommendations regarding discharge, if any.

3 (b) Upon receiving such notice, the district court shall order that a  
4 hearing be held. The court shall give notice of the hearing to: (1) The  
5 ~~state hospital or~~ state security hospital, *state psychiatric hospital or county*  
6 *or private facility* where the defendant is under commitment; (2) the  
7 district or county attorney of the county from which the defendant was  
8 originally committed; (3) the defendant; and (4) the defendant's attorney.  
9 The court shall inform the defendant that such defendant is entitled to  
10 counsel and that counsel will be appointed to represent the defendant if  
11 the defendant is not financially able to employ an attorney as provided in  
12 K.S.A. 22-4503 et seq., and amendments thereto. The hearing shall be  
13 held within 30 days after the receipt by the court of the chief medical  
14 officer's notice.

15 (c) At the hearing, the defendant shall be ~~sentenced, committed, for~~  
16 *further treatment, as provided for in K.S.A. 22-3430, and amendments*  
17 *thereto, sentenced, granted probation, assigned to a community correc-*  
18 *tional services program, as provided by K.S.A. 75-5291, and amendments*  
19 *thereto, or discharged as the court deems best under the circumstance.*  
20 The time spent in a state or ~~local institution~~ *other treatment facility* pur-  
21 *suant to a commitment under K.S.A. 22-3430, and amendments thereto*  
22 *shall be credited against any sentence, confinement or imprisonment im-*  
23 *posed on the defendant.*

24 Sec. 7. K.S.A. 38-1513 is hereby amended to read as follows: 38-  
25 1513. (a) *Physical or mental care and treatment.* (1) When a child less  
26 than 18 years of age is alleged to have been physically, mentally or emo-  
27 tionally abused or neglected or sexually abused, no consent shall be re-  
28 quired to medically examine the child to determine whether the child has  
29 been maltreated.

30 (2) When the health or condition of a child who is a ward of the court  
31 requires it, the court may consent to the performing and furnishing of  
32 hospital, medical, surgical or dental treatment or procedures, including  
33 *consent for care and treatment of mental disorders, other than inpatient*  
34 *treatment at a state psychiatric hospital, and for the release and inspec-*  
35 *tion of medical or dental records.* A child, or parent of any child, who is  
36 opposed to certain medical procedures authorized by this subsection may  
37 request an opportunity for a hearing thereon before the court. Subse-  
38 quent to the hearing, the court may limit the performance of matters  
provided for in this subsection or may authorize the performance of those  
matters subject to terms and conditions the court considers proper.

41 (3) Prior to disposition the person having custody of the child may  
42 give consent to the following:

43 (A) Dental treatment for the child by a licensed dentist;

1 (B) diagnostic examinations of the child, including but not limited to  
2 the withdrawal of blood or other body fluids, x-rays and other laboratory  
3 examinations;

4 (C) releases and inspections of the child's medical history records;

5 (D) immunizations for the child;

6 (E) administration of lawfully prescribed drugs to the child; and

7 (F) examinations of the child including, but not limited to, the with-  
8 drawal of blood or other body fluids or tissues, for the purpose of deter-  
9 mining the child's parentage.

10 (4) When the court has granted legal custody of a child in a disposi-  
11 tional hearing to any agency, association or individual, the custodian or  
12 an agent designated by the custodian shall have authority to consent to  
13 the performance and furnishing of hospital, medical, surgical or dental  
14 treatment or *for procedures or mental care or treatment, including care*  
15 *and treatment of mental disorders*, other than inpatient treatment at a  
16 state psychiatric hospital, *including and for* the release and inspection of  
17 medical or hospital records, subject to terms and conditions the court  
18 considers proper.

19 (5) If a child is in the custody of the secretary, the secretary may  
20 consent to the ~~mental~~ care and treatment of the child *for mental disor-*  
21 *ders*, without court approval, so long as such care and treatment ~~do~~ *does*  
22 not include inpatient treatment at a state psychiatric hospital.

23 (6) Any health care provider who in good faith renders hospital, med-  
24 ical, surgical, ~~mental or~~ dental care or treatment *or treatment for any*  
25 *mental disorder* to any child after a consent has been obtained as au-  
26 thorized by this section shall not be liable in any civil or criminal action  
27 for failure to obtain consent of a parent.

28 (7) Nothing in this section shall be construed to mean that any person  
29 shall be relieved of legal responsibility to provide care and support for a  
30 child.

31 (b) ~~Mental Care and treatment for mental disorders requiring court~~  
32 *action*. If it is brought to the court's attention, while the court is exercising  
33 jurisdiction over the person of a child under this code, that the child may  
34 be a mentally ill person as defined in K.S.A. 2000 Supp. 59-2946, and  
35 amendments thereto, the court may:

36 (1) Direct or authorize the county or district attorney or the person  
37 supplying the information to file the petition provided for in K.S.A. 2000  
38 Supp. 59-2957, and amendments thereto, and proceed to hear and de-  
39 termine the issues raised by the ~~application~~ *petition* as provided in the  
40 care and treatment act for mentally ill persons; or

41 (2) authorize ~~that~~ the child *to* seek voluntary admission to a treatment  
42 facility as provided in K.S.A. 2000 Supp. 59-2949, and amendments  
43 thereto.



1 ~~The application~~ A petition to determine whether the child is a mentally  
 2 ill person *subject to involuntary commitment for care and treatment* may  
 3 be filed in the same proceedings as the petition alleging the child to be  
 4 a child in need of care, or may be brought in separate proceedings. In  
 5 either event the court may enter an order staying any further proceedings  
 6 under this code until all proceedings have been concluded under the care  
 7 and treatment act for mentally ill persons.

8 Sec. 8. K.S.A. 38-1514 is hereby amended to read as follows: 38-  
 9 1514. (a) *Of child.* (1) *Psychological or emotional.* (A) During proceed-  
 10 ings under this code, the court, on its own motion or the motion of the  
 11 guardian *ad litem* for the child, may order an evaluation and written report  
 12 of the psychological or emotional development or needs of a child who  
 13 is the subject of the proceedings. The court may refer the child to a state  
 14 ~~institution for the evaluation if the secretary advises the court that the~~  
 15 ~~facility is a suitable place to care for, treat or evaluate the child and that~~  
 16 ~~space is available~~ any appropriate professional, state, county or private  
 17 facility for this evaluation, except that the court shall not refer the child  
 18 to a state psychiatric hospital, unless a written statement from a qualified  
 19 mental health professional, as defined in K.S.A. 2000 Supp. 59-2946, and  
 20 amendments thereto, authorizing such referral to a state psychiatric hos-  
 21 pital has been filed with the court.

22 (B) ~~[No qualified mental health professional who shall either make or~~  
 23 ~~decide not to make such a written statement authorizing admission to a~~  
 24 ~~state psychiatric hospital, nor the participating community mental health~~  
 25 ~~center at which that professional is acting on behalf of, shall be liable to~~  
 26 ~~any person for this decision.~~

27 ~~(C)~~ The expenses of transportation to and from the state facility may  
 28 be paid as a part of the expenses of temporary care and custody. The  
 29 child may be referred to a mental health center or qualified professional  
 30 for evaluation and the expenses of the evaluation may be considered as  
 31 expenses of the proceedings and assessed as provided in this code.

32 ~~(D)~~ If the court orders an evaluation as provided in this section, a  
 33 parent of the child shall have the right to obtain an independent evalua-  
 34 tion at the expense of the parent.

(C)

35 (2) *Medical.* During proceedings under this code, the court may or-  
 36 der an examination and report of the medical condition and needs of a  
 37 child who is the subject of the proceedings. The court may also order a  
 38 report from any physician who has been attending the child stating the  
 39 diagnosis, condition and treatment afforded the child.

40 (3) *Educational.* The court may order the chief administrative officer  
 41 of the school which the child attends or attended to provide to the court  
 42 information that is readily available which the school officials believe  
 43 would properly indicate the educational needs of the child. The order

1 may direct that the school conduct an educational needs assessment of  
2 the child and send a report of the assessment to the court. The educa-  
3 tional needs assessment may include a meeting involving any of the fol-  
4 lowing: The child's parents, the child's teachers, the school psychologist,  
5 a school special services representative, a representative of the secretary,  
6 the child's C.A.S.A., the child's foster parents or legal guardian, a court  
7 services officer, and other persons that the chief administrative officer of  
8 the school or the officer's designee considers appropriate.

9 (b) *Of parent or custodian.* (1) *Physical, psychological or emotional.*  
10 During proceedings under this code, the court may order an examination,  
11 evaluation and report of the physical, mental or emotional status or needs  
12 of a parent or any other relative being considered as one to whom the  
13 court may grant custody. Written reports and other materials relating to  
14 the examination and evaluation may be considered by the court but, if  
15 requested by any interested party in attendance, the court shall require  
16 the person preparing the report or other material to appear and testify.

17 (2) *Parenting skills.* At any dispositional hearing, the court may re-  
18 ceive and consider written reports from any physician or qualified person  
19 concerning the parenting skills or ability to provide for the physical, men-  
20 tal or emotional needs and future development of a child by a parent or  
21 other relative being considered for custody. If requested by any interested  
22 party in attendance at the dispositional hearing, the court shall require  
23 the person preparing the report to appear and testify.

24 (c) *Confidentiality of reports.* (1) *Reports of court ordered examina-*  
25 *tion or evaluation.* No confidential relationship of physician and patient,  
26 psychologist and client or social worker and client shall arise from an  
27 examination or evaluation ordered by the court.

28 (2) *Report from private physician, psychologist or therapist.* When  
29 any interested party to proceedings under this code wishes the court to  
30 have the benefit of information or opinion from a physician, psychologist,  
31 registered marriage and family therapist or social worker with whom there  
32 is a confidential relationship, the interested party may waive the confi-  
33 dential relationship but restrict the information to be furnished or testi-  
34 mony to be given to those matters material to the issues before the court.  
35 If requested, the court may make an *in camera* examination of the pro-  
36 posed witness or the file of the proposed witness and excise any matters  
37 that are not material to the issues before the court.

38 Sec. 9. K.S.A. 38-1614 is hereby amended to read as follows: 38-  
1614. (a) *Physical care and treatment.* (1) When the health or condition  
41 of a juvenile who is subject to the jurisdiction of the court requires it, the  
42 court may consent to the performing and furnishing of hospital, medical,  
43 surgical or dental treatment or procedures including the release and in-  
spection of medical or dental records.

1 (2) When the health or condition of a juvenile requires it and the  
 2 juvenile has been placed in the custody of a person other than a parent  
 3 or placed in or committed to a facility, the custodian or an agent desig-  
 4 nated by the custodian shall have authority to consent to the performance  
 5 and furnishing of hospital, medical, surgical or dental treatment or pro-  
 6 cedures including the release and inspection of medical or dental records,  
 7 subject to terms and conditions the court considers proper. The provi-  
 8 sions of this subsection shall also apply to juvenile felons, as defined in  
 9 K.S.A. 38-16,112, prior to its repeal, who have been placed in a juvenile  
 10 correctional facility pursuant to K.S.A. 75-5206, and amendments thereto.

11 (3) Any health care provider, who in good faith renders hospital, med-  
 12 ical, surgical or dental care or treatment to any juvenile after a consent  
 13 has been obtained as authorized by this section, shall not be liable in any  
 14 civil or criminal action for failure to obtain consent of a parent.

15 (4) Nothing in this section shall be construed to mean that any person  
 16 shall be relieved of legal responsibility to provide care and support for a  
 17 juvenile.

18 (b) ~~Mental Care and treatment for mental disorders.~~ ~~¶ (1) As part~~  
 19 ~~of any dispositional order entered pursuant to K.S.A. 38-1663, and~~  
 20 ~~amendments thereto, the court may consent to, or provide for the giving~~  
 21 ~~of consent to, care and treatment for mental disorders, other than inpa-~~  
 22 ~~tient care and treatment at a state psychiatric hospital.~~

23 (2) ~~If at any time it is brought to the court's attention, while the court~~  
 24 ~~is exercising jurisdiction over the person of a juvenile under this code,~~  
 25 ~~that the juvenile may be a mentally ill person as defined in K.S.A. 2000~~  
 26 ~~Supp. 59-2946, and amendments thereto, the court may:~~

27 ~~(A)~~ (A) Direct or authorize the county or district attorney or the per-  
 28 son supplying the information to file the petition provided for in K.S.A.  
 29 2000 Supp. 59-2957, and amendments thereto, and proceed to hear and  
 30 determine the issues raised by the ~~application~~ *petition* as provided for in  
 31 the care and treatment act for mentally ill persons; or

32 ~~(B)~~ (B) authorize ~~that~~ the juvenile to seek voluntary admission to a  
 33 treatment facility as provided in K.S.A. 2000 Supp. 59-2949, and amend-  
 34 ments thereto.

35 ~~The application~~ *A petition* to determine whether the juvenile is a men-  
 36 tally ill person, *subject to involuntary commitment for care and treatment,*  
 37 may be filed in the same proceedings as the petition alleging the juvenile  
 38 to be a juvenile offender or may be brought in separate proceedings. In  
 either event, the court may enter an order staying any further proceedings  
 under this code until all proceedings have been concluded under the care  
 and treatment act for mentally ill persons.

42 Sec. 10. K.S.A. 38-1637 is hereby amended to read as follows: 38-  
 43 1637. (a) For the purpose of this section, a respondent is incompetent

1 for hearing when charged as a juvenile offender and, because of mental  
2 illness or defect, is unable:

3 (1) To understand the nature and purpose of the proceedings; or

4 (2) to make or assist in making a defense.

5 (b) Whenever the words "competent," "competency," "incompetent"  
6 and "incompetency" are used without qualification in this code, they shall  
7 refer to the respondent's competency or incompetency, as described in  
8 subsection (a).

9 (c) (1) At any time after the respondent has been charged with an  
10 act which, if the respondent is found to have committed, would result in  
11 being adjudged to be a juvenile offender and before trial, the respondent,  
12 the respondent's attorney or the county or district attorney may request  
13 a determination of the respondent's competency for hearing. If, upon the  
14 request of either party or upon ~~one's~~ *the judge's* own knowledge and  
15 observation, the judge before whom the case is pending finds that there  
16 is reason to believe that the respondent is incompetent for hearing, the  
17 proceedings shall be suspended and a hearing conducted to determine  
18 the competency of the respondent.

19 (2) All proceedings under this section shall be in the court in which  
20 the case is pending. The court shall determine the issue of competency  
21 and may order a psychiatric or psychological examination of the respon-  
22 dent. To facilitate the examination, the court may: (A) Appoint two qual-  
23 ified licensed physicians or licensed psychologists, or one of each to ex-  
24 amine the respondent or (B) designate a private psychiatric or  
25 psychological facility or public mental health center to conduct the ex-  
26 amination and report to the court. If either physician or psychologist, the  
27 private psychiatric facility or the public mental health center determines  
28 that further examination is necessary, the court may commit the respon-  
29 dent for not more than 60 days to any appropriate state, county or private  
30 ~~institution~~ *facility* for examination and appropriate report to the court,  
31 *except that the court shall not commit the respondent to a state psychiatric*  
32 *hospital, unless a written statement from a qualified mental health pro-*  
33 *fessional as defined in K.S.A. 2000 Supp. 59-2946, and amendments*  
34 *thereto, authorizing such admission to a state psychiatric hospital has*  
35 *been filed with the court.* For good cause shown, the commitment may  
36 be extended for another 60 days.

37 (3) ~~No qualified mental health professional who shall either make or~~  
38 ~~decide not to make such a written statement authorizing admission to a~~  
39 ~~state psychiatric hospital, nor the participating community mental health~~  
40 ~~center at which that professional is employed or for which the professional~~  
41 ~~is acting on behalf of, shall be liable to any person for this decision.~~

42 (4) No statement made by the respondent in the course of any ex-  
43 amination provided for by this section, whether the examination is with



1 or without the consent of the respondent, shall be admitted in evidence  
2 against the respondent in any hearing. (4)

3 ~~(3) (5)~~ If the respondent is found to be competent, the proceedings  
4 which have been suspended shall be resumed.

5 ~~(4) (6)~~ If the respondent is found to be incompetent, the respondent  
6 shall be committed for treatment pursuant to K.S.A. 38-1638, and amend-  
7 ments thereto, and shall remain subject to the further order of the court. (5)

8 ~~(5) (7)~~ The respondent shall be present personally at all proceedings  
9 under this section. (6)

10 ~~(6) (8)~~ A respondent who is found to be incompetent shall be com-  
11 mitted for treatment to any appropriate state, county or private institution  
12 during the continuance of that condition. One or both parents of the  
13 respondent may be ordered to pay child support during the time the  
14 respondent is receiving treatment. Upon application of the respondent  
15 and in the discretion of the court, the respondent may be released to any  
16 appropriate private institution facility for treatment upon terms and con-  
17 ditions prescribed by the court. (7)

18 ~~(7) (9)~~ When reasonable grounds exist to believe that a respondent  
19 who has been adjudged incompetent is now competent, the court in  
20 which the case is pending shall conduct a hearing to determine the re-  
21 spondent's present mental condition. Reasonable notice of the hearings  
22 shall be given to the county or district attorney, the respondent and the  
23 respondent's attorney of record, if any. If the court, following the hearing,  
24 finds the respondent to be competent, the proceedings pending against  
25 the respondent shall be resumed. (8)

26 Sec. 11. K.S.A. 38-1638 is hereby amended to read as follows: 38-  
27 1638. (a) A respondent who is found to be incompetent for hearing shall  
28 be committed for evaluation and treatment to any appropriate state,  
29 county or private institution facility for a period of not to exceed 90 days  
30 except that the court shall not commit the respondent to a state psychiatric  
31 hospital, unless a written statement from a qualified mental health pro-  
32 fessional, as defined in K.S.A. 2000 Supp. 59-2946, and amendments  
33 thereto, authorizing such admission to a state psychiatric hospital has  
34 been filed with the court. Within 90 days of the respondent's commitment  
35 to the institution, the chief medical officer of the institution facility shall  
36 certify to the court whether the respondent has a substantial probability  
37 of attaining competency for hearing in the foreseeable future. If the prob-  
38 ability does exist, the court shall order the respondent to remain in an  
41 that facility or another appropriate state, county or private institution  
42 facility until the respondent attains competency for hearing or for a period  
43 of six months from the date of the original commitment, whichever occurs  
first except that the court shall at no time commit the respondent to a  
state psychiatric hospital, unless a written statement from a qualified men-

1 *tal health professional, as defined in K.S.A. 2000 Supp. 59-2946, and*  
 2 *amendments thereto, authorizing such admission to a state psychiatric*  
 3 *hospital has been filed with the court. If the probability does not exist,*  
 4 *the court shall order the secretary of social and rehabilitation services to*  
 5 *commence involuntary commitment proceedings pursuant to article 29*  
 6 *of chapter 59 of the Kansas Statutes Annotated, and amendments thereto.*

7 (b) ~~No qualified mental health professional who shall either make or~~  
 8 ~~decide not to make such a written statement authorizing admission to a~~  
 9 ~~state psychiatric hospital, nor the participating community mental health~~  
 10 ~~center at which that professional is employed or for which the professional~~  
 11 ~~is acting on behalf of, shall be liable to any person for this decision.~~

12 (c) If a respondent who was found to have a substantial probability  
 13 of attaining competency for hearing, as provided in subsection (a), has  
 14 not attained competency for hearing within six months from the date of  
 15 the original commitment, the court shall order the secretary of social and  
 16 rehabilitation services to commence involuntary commitment proceed-  
 17 ings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated,  
 18 *and amendments thereto.*

19 (e) ~~(d)~~ When reasonable grounds exist to believe that a respondent  
 20 who has been adjudged incompetent for hearing is competent, the court  
 21 in which the case is pending shall conduct a hearing in accordance with  
 22 K.S.A. 38-1637, and amendments thereto, to determine the respondent's  
 23 present mental condition. Reasonable notice of the hearing shall be given  
 24 to the prosecuting attorney, the respondent and the respondent's attorney  
 25 of record, if any. If the court, following the hearing, finds the respondent  
 26 to be competent, the proceedings pending against the respondent shall  
 27 be resumed.

(c)

28 Sec. 12. K.S.A. 38-1639 is hereby amended to read as follows: 38-  
 29 1639. (a) Whenever involuntary commitment proceedings have been  
 30 commenced by the secretary of social and rehabilitation services as re-  
 31 quired by K.S.A. 38-1638, and amendments thereto, and the respondent  
 32 is not committed to a treatment facility as a patient, the respondent shall  
 33 remain in the ~~institution facility~~ where committed pursuant to K.S.A. 38-  
 34 1638, and amendments thereto, ~~and the secretary of social and rehabi-~~  
 35 ~~litation services~~ shall promptly notify the court in which the proceedings  
 36 are pending and the commissioner of the result of the involuntary commit-  
 37 ment ~~proceedings~~ *proceeding*. The court shall then proceed pursuant  
 38 to subsection (c).

39 (b) Whenever involuntary commitment proceedings have been com-  
 40 menced by the secretary of social and rehabilitation services as required  
 41 by K.S.A. 38-1638, and amendments thereto, and the respondent is com-  
 42 mitted to a treatment facility as a patient but thereafter is *appropriate* to  
 43 be discharged pursuant to article 29 of chapter 59 of the Kansas Statutes

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1 Annotated, and amendments thereto, the respondent shall remain in the  
 2 institution treatment where committed pursuant to K.S.A. 38-1638, and  
 3 amendments thereto. the care and treatment act for mentally ill persons,  
 4 and the head of the treatment facility shall promptly notify the court in  
 5 which the proceedings are pending that the respondent is appropriate to  
 6 be discharged. The court shall then proceed pursuant to subsection (c).

7 (c) Within five days after receiving notice pursuant to subsection (a)  
 8 or (b), the court shall order the respondent to be discharged from com-  
 9 mitment and shall dismiss without prejudice the charges against the re-  
 10 spondent. The period of limitation for the prosecution for the crime  
 11 charged shall not continue to run until the respondent has been deter-  
 12 mined to have attained competency.

13 Sec. 13. K.S.A. 38-1662 is hereby amended to read as follows: 38-  
 14 1662. (a) *Psychological or emotional.* (1) Following the juvenile being  
 15 adjudged to be a juvenile offender under this code the court may order  
 16 an evaluation and written report of the psychological or emotional devel-  
 17 opment or needs of the juvenile offender. The juvenile offender may  
 18 be referred to a mental health center or a qualified professional for the  
 19 evaluation, and the any appropriate professional, county, state or private  
 20 facility for this evaluation, except that the court shall not refer the juvenile  
 21 offender to a state psychiatric hospital, unless a written statement from a  
 22 qualified mental health professional, as defined in K.S.A. 2000 Supp. 59-  
 23 2946, and amendments thereto, authorizing such referral to a state psy-  
 24 chiatric hospital has been filed with the court.

25 (2) ~~No qualified mental health professional who shall either make or~~  
 26 ~~decide not to make such a written statement authorizing admission to a~~  
 27 ~~state psychiatric hospital, nor the participating community mental health~~  
 28 ~~center at which that professional is employed or is acting on behalf of,~~  
 29 ~~shall be liable to any person for this decision.~~

30 (3) The expenses of the evaluation may be considered as expenses of  
 31 the proceedings and assessed as provided in this code.

32 (4) If the court orders an evaluation as provided in this section, a  
 33 parent of the juvenile offender shall have the right to obtain an inde-  
 34 pendent evaluation at the expense of the parent.

35 (b) *Medical.* Following the juvenile being adjudged to be a juvenile  
 36 offender under this code, the court may order an examination and report  
 37 of the medical condition and needs of the juvenile offender who is the  
 38 subject of the proceedings. The court may also order a report from any  
 39 physician who has been attending the juvenile offender stating the diag-  
 nosis, condition and treatment afforded the juvenile offender.

(c) *Educational.* The court may order the chief administrative officer  
 42 of the school which the juvenile offender attends or attended to provide  
 43 to the court information that is readily available which the school officials

(3)

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1 feel would properly indicate the educational needs of the juvenile of-  
 2 fender. The order may direct that the school conduct an educational  
 3 needs assessment of the juvenile offender and send a report thereof to  
 4 the court. The educational needs assessment may include a meeting in-  
 5 volving any of the following: (1) The juvenile offender's parents, (2) the  
 6 juvenile offender's teacher or teachers, (3) the school psychologist, (4) a  
 7 school special services representative, (5) a representative of the com-  
 8 missioner, (6) the juvenile offender's C.A.S.A., (7) the juvenile offender's  
 9 foster parents or legal guardian and (8) other persons that the chief ad-  
 10 ministrative officer of the school, or the officer's designee, deems  
 11 appropriate.

12 ~~Sec. 14. K.S.A. 22-3302, 22-3303, 22-3429, 22-3430, 38-1513, 38-~~  
 13 ~~1514, 38-1614, 38-1637, 38-1638, 38-1639 and 38-1662, and K.S.A. 2000~~  
 14 ~~Supp. 22-3305 and 22-3431, are hereby repealed.~~

15 Sec. 15. This act shall take effect and be in force from and after its  
 16 publication in the statute book.

Sec. 14. K.S.A. 2000 Supp. 75-6102 (See attached)

Sec. 15. K.S.A. 75-6115 (See attached)

Renumber remaining sections

and 75-6115

, 75-6102 and 75-6102a



**Sec. 14.** K.S.A. 75-6102 is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider. Employee includes any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor, but does not otherwise include any independent contractor under contract with a governmental entity except (1) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections, (2) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor; ~~and~~ (3) a person who is an employee or volunteer of a nonprofit program, other than a municipality, who has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile justice to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through a liability insurance contract of such nonprofit program; and (4) employees of a mental health center . "Employee" also includes an employee of an indigent health care clinic. "Employee" also includes former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity.

(e) "Community service work" means public or community service performed by a person (1) as a result of a contract of diversion entered into by such person as authorized by law, (2) pursuant to the assignment of such person by a court to a community corrections program, (3) as a result of suspension of sentence or as a condition of probation pursuant to court order, (4) in lieu of a fine imposed by court order or (5) as a condition of placement ordered by a court pursuant to K.S.A. 38-1663, and amendments thereto.

(f) "Charitable health care provider" means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing arts, a ~~physician's~~ physician assistant ~~registered~~ licensed by the state board of healing arts or a health care provider as the term "health care provider" is defined under K.S.A.

65-241, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the department of social and rehabilitation services, and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto;

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children's immunization programs administered by the secretary; or

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 75-6120 and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3).

(g) "Medically indigent person" means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

(h) "Indigent health care clinic" means an outpatient medical care clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(i) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

(j) "Mental health center" means any mental health center organized pursuant to to the provisions of K.S.A. 19-4001 through 19-4016, and amendments thereto, and licensed by the secretary of social and rehabilitation services under K.S.A. 75-3307b, and amendments thereto, when engaged in the performance of any duty created by statute, rules and regulations or contract between the mental health center and the department of social and rehabilitation services or a county pursuant to K.S.A. 19-4001 through 19-4016, and amendments thereto.

**Sec. 15.** K.S.A. 75-6115 is hereby amended to read as follows: 75-6115. (a) The Kansas tort claims act shall not be applicable to claims arising from the rendering of or failure to render professional services by a health care provider other than:

(1) A charitable health care provider;

- .) a hospital owned by a municipality and the employees thereof;
- (3) a local health department and the employees thereof;
- (4) an indigent health care clinic and the employees thereof; ~~or~~
- (5) a district coroner or deputy district coroner appointed pursuant to K.S.A. 22a-226 and amendments thereto;

(6) a mental health center and employees thereof.

(b) Claims for damages against a health care provider that is a governmental entity or an employee of a governmental entity other than those health care providers enumerated in subsection (a), arising out of the rendering of or failure to render professional services by such health care provider, may be recovered in the same manner as claims for damages against any other health care provider.

(c) As used in this section:

(1) "Indigent health care clinic" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.

(2) "Charitable health care provider" shall have the meaning ascribed to such term under K.S.A. 75-6102, and amendments thereto.

(3) "Health care provider" shall have the meaning ascribed to such term under K.S.A. 40-3401, and amendments thereto.

(4) "Hospital" means a medical care facility as defined in K.S.A. 65-425, and amendments thereto, and includes within its meaning any clinic, school of nursing, long-term care facility, child-care facility and emergency medical or ambulance service operated in connection with the operation of the medical care facility.

(5) "Local health department" shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.