Approved
Date: February 8, 2001

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:37 a.m. on February 7, 2001 in Room 123-S of the Capitol.

All members were present except: Sen. Umbarger (excused)

Committee staff present:
Gordon Self, Revisor
Mike Heim, Research
Mary Blair, Secretary

Conferees appearing before the committee:
Elwaine Pomeroy, Kansas Credit Attorneys Association and Kansas Collectors Association, Inc.
Gerald Goodell, Kansas Judicial Council
Laura Howard, Assistant Secretary of Health Care Policy, SRS

Others attending: see attached list

SB 136–re: wage garnishment; assignment of account

Conferee Pomeroy testified in support of **SB 136**, a bill which amends current law regarding wage garnishment by removing language that prohibits non-governmental assignees of collection accounts from using wage garnishments as a method of collection and allows private companies who were not parties to an original action to utilize wage garnishment for the collection of judgments. He discussed examples of arrangements this bill addresses. (attachment 1) Discussion followed.

SB 137–enacting the Kansas estate tax apportionment act

Conferee Goodell testified in support of **SB 137**, a bill which replaces all previous estate tax provisions with a method of apportioning and assessing estate taxes between all of the decedent's beneficiaries, whether the parties' testamentary interest is a probate or non-probate interest. He called the bill the "default" statute and stated it was fair and equitable to all parties involved. (attachment 2) Discussion followed.

SB 119–concerning mental health; re: screenings and placements

Conferee Howard testified in support of **SB 119**, a bill which she stated extends to CINC cases, juvenile offender cases and misdemeanor cases the requirement that community mental health screenings occur prior to admission to state psychiatric hospitals. She detailed the process by which this is carried out. She further stated that the bill would add liability protections for mental health professionals and she discussed several other language changes in the bill. (attachment 3)

SB 74–concerning certain law enforcement officers of the state and certain political subdivisions thereof; concerning Native American Indian tribal law enforcement officers

The Chair distributed a balloon amendment on **SB 74** submitted by Natalie Haag of the governor's office which addressed the issue of tribal law enforcement agencies or law enforcement officers of those agencies assisting a state, county or city law enforcement agency or law enforcement officer of that agency. She proposed a change at line 15 to replace the language "is requested" with "receives a direct request" and she offered further language proposing a waiver of sovereign immunity for tribal law enforcement when assisting city, county, or state law enforcement agencies. Lengthy discussion followed. Senator Adkins made a motion to amend the bill by striking "is requested" at line 15 and adding the language "receives a direct request", Senator Schmidt seconded. Following clarifying discussion, Senator Oleen made a substitute motion to report the bill out favorably as it is, Senator Haley seconded. On the vote being four yeas and four nays, the Chair voted yea and the motion carried.

The meeting adjourned at 10:34 a.m. The next scheduled meeting is February 8, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 7, 2001

NAME	REPRESENTING
Rich Gattshall	Health Midwest
Jerry Goodell	Judicial Council
Randy M. Hearrell	" "
Thomas A. Valentine, III	First Resolution Trust
Angel Zimmerman	Thomas A. Valentine, P.A.
Amy Kelley	Kaw for Naturalizing
Nancy Bear	Kickapoo Tribe
Greg Chubbuck	Kickapoo Tribe
Ellarine J. Pomeroy	Kansas Credit Attorneys Assn Kansas Collectors Assn
KEITH R LANDIS	CHRISTIAN SCIENCE COMMITTEE ON PUBLICATION FOR KANSAS
Barb Conrad	Ks Trial Lawyers Assoc
Bill Henry	Ks Gov. Consulting
Trudy Racine	SCS
Lana Howard	SRS
Verna Weber	SRS
Kim Weaver	KS Medical Group Mgmt Assn.
Diana Friedemann	United Imaging Consultants
Sharon Beaty	Central KS Medical Center
Tracy Bird	Medical Service Corp

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: February 7, 2001 Cont'd

NAME	REPRESENTING
Lynn Adams	KMGMA
Tom Burgess	Burgess & Associates
John Peterson	Ks Governmental Consulting
Mike Hutfles	Ks Gov't. Consulting
Paul Johnson	DACK
Michael White	Kearney Law Office
Scott Brunner	DOB

SJ 2-7-01 att 1

REMARKS CONCERNING SENATE BILL 136

SENATE JUDICIARY COMMITTEE

FEBRUARY 7, 2001

Thank you for giving me the opportunity to appear before you on behalf of the Kansas Credit Attorneys Association, which is a state-wide organization of attorneys whose practice includes considerable collection work, and Kansas Collectors Association, Inc., which is an association of collection agencies in Kansas.

This bill would delete subparagraph d of K.S.A. 2000 Supp. 60-2310. Subparagraph d prohibits a judgment creditor from using wage garnishment to enforce any claim which has been assigned. For instance, if ABC Company buys an account from a creditor, whether that account is already in judgment or not, ABC Company cannot thereafter enforce the account against the debtor by the use of wage garnishment.

Assignment of an account does not refer to the typical arrangement whereby a creditor places an account for collection with a collection agency or collection attorney. In that situation, the account has not been assigned. The original creditor still owns the account and any enforcement of the account must be brought in the name of the original creditor.

An account is assigned where value is given by the assignee and the actual ownership of the account is transferred from the original creditor to the assignee.

This is a common arrangement in commerce today, particularly in the banking and finance industry. Consumer debt created by credit cards, promissory notes and

SJ 2-7-01 att 1

mortgages is bought and sold every day. It is not unusual for a mortgage to be sold several times before the borrower pays it off.

Another common practice is in the telephone industry, where the consumer receives a bill from one telephone company that includes charges from one or more other companies. As an example, I write a check each month for my telephone service at home to Southwestern Bell, who in turn forwards part of the money included in the total bill to my long distance carrier.

The proposed amendment is not designed to necessarily encourage this practice, but simply to recognize that the arrangement is common in the market place and to allow the purchaser of debt the same enforcement options as does the original creditor. The consumer is not deprived of any remedies as the assignee on consumer paper remains subject to all of the same defenses that would affect the original creditor.

I understand that in 1998, 25 billion dollars of debt was sold in this country. There was a great increase in the sale of debt in 1999, when debt sales increased to 425 billion dollars. A personal experience that I had a few months ago was with regard to my revolving credit account with J.C. Penney. I always pay the entire balance due each month. I was surprised to receive a notification that my account had been sold by J.C. Penney to a bank in Georgia.

Kansas is unusual in having this prohibition against wage garnishment for an assigned account. None of our surrounding states, Colorado, Iowa, Missouri, Nebraska, and Oklahoma have any such prohibition. We believe that Kansas should recognize current practices in the business community.

It is important to remember that the debtor owes the same debt regardless. The sale of the debt is simply a matter of the creditor trying to manage its own credit policies and control cash flow. Today, paper is routinely sold to reduce operating costs, keep prices down and keep businesses afloat to employ people and continue to supply their goods and services. The cost of continuing to monitor and collect accounts causes creditors to sell off their paper. The debtor pays no penalty. The only difference to the debtor is to whom the check is written.

The debtor has received the services or received the goods, or received money that has been borrowed. The debtors should be held responsible for the debts that they have incurred.

Elwaine F. Pomeroy
For Kansas Credit Attorneys Association
And Kansas Collectors Association, Inc.

JUDICIAL COUNCIL TESTIMONY
ON 2001 SB 137
FEBRUARY 7, 2001

In 2000 the Judicial Council agreed to consider drafting a Kansas Estate Tax Apportionment Act. The Council appointed a committee to conduct the study. Members of the Estate Tax Apportionment Advisory Committee are: Gerald Goodell, Chair, Topeka; Peter A. Cotorceanu, Topeka; Martin B. Dickinson, Lawrence; Theron E. Fry, Wichita; John R. Luttjohann, Topeka; William Q. Martin, Smith Center; Austin Nothern, Topeka; Timothy O'Sullivan, Wichita; and William P. Trenkle, Dodge City.

The Committee drafted the proposed Kansas Estate Tax Apportionment Act which is contained in SB 137.

Current Law

The United States Supreme Court has held that, subject to certain specific exceptions in the Internal Revenue Code, the question of who bears the ultimate burden of the federal estate tax is controlled by state law. *Riggs v. Del Drago*, 317 U.S. 95 (1942). Unlike most states, Kansas does not have a statute apportioning federal estate tax liability. Current Kansas case law provides that (i) in the absence of anything in the will to the contrary, the burden of federal estate tax falls on the residuary estate, (ii) a surviving spouse's share of an estate, to the extent it qualifies for the marital deduction, may not be reduced to bear any portion of estate tax, and (iii) should the residuary estate not be sufficient to pay the tax, the remaining burden is apportioned among the beneficiaries according to the value of the property each beneficiary receives.

This system of apportionment, which is commonly referred to as the "burden on the residue" approach, can lead to unfortunate results. For example, the taxable estate may include joint tenancy property, transfer on death accounts, savings bonds with named beneficiaries, or other property not subject to probate but still subject to federal estate tax. If so, the result under current Kansas law is that the tax generated by such non-probate assets is borne by the residuary beneficiaries of the probate estate, *not* by the persons who actually receive the non-probate property.

Another question under current law is how the tax is to be collected from those ultimately liable for it. The Internal Revenue Code imposes the responsibility for collecting and paying the federal estate tax on the executor, administrator, or other person in possession of the decedent's property (the "personal representative"). However, Kansas law currently contains inadequate procedures to assist personal representative in collecting the tax from the beneficiaries. As a result, attempts by personal representatives to collect estate taxes are often cumbersome, expensive, and ineffective.

Proposed Law

Section 322A, Apportionment of Taxes, Revised Civil Statutes of Texas, was used as the starting point and model for preparation of the Kansas Estate Tax Apportionment Act. The act adopts the general principle of "equitable apportionment." Under equitable apportionment, each person who receives property from a taxable estate is liable for his or her pro-rata share of the tax.

The beneficiary's share of the tax is determined by multiplying the total tax by a fraction. The numerator of the fraction is the taxable value of the property the beneficiary receives, and the denominator is the taxable estate of the decedent. For example, assume a person receives joint tenancy property worth $100,000 from a decedent whose taxable estate is $1.5 million. If the total estate tax is $300,000, then the recipient of the joint tenancy property would be liable for 1/15th ($100,000/$1.5 million) of the $300,000 tax, or $20,000.

This act is what is known as a "default" statute and will not apply if the decedent specifically provides for some other method of apportionment. Thus, under this proposal, equitable apportionment can be overridden by a provision in a testamentary or inter vivos instrument that specifically addresses the allocation of estate taxes.

In addition to its general apportionment provisions, the statute also addresses the allocation of taxes attributable to several specific types of property. These include so-called "split interests," "special use" property, and "qualified family-owned business" assets.

The statute also contains specific enforcement mechanisms designed to assist personal representatives in collecting estate taxes from beneficiaries. In addition, it allows personal representatives from other states the right to initiate collection actions in Kansas courts if those states grant a Kansas personal representative a reciprocal right of access to their courts.

Comments to Sections

Subsection 1(a)(6)

Subsection 1(a)(6), defining "representative," applies not only to the executor or administrator of an estate, but any person who is required under the provisions of the Internal Revenue Code to pay estate taxes assessed against the estate.

Subsection 1(b)(1)

Subsection states the general rule of apportionment that each person's proportionate part of the total tax is to be determined according to the percentage of such interest in the total taxable value of the estate. However, if the taxes are otherwise specifically apportioned then those provisions prevail as to that property and those interests are disregarded when calculating the proportional

apportionment. For example, federal law specifically apportions the tax on Qualified Terminable Interest Property (QTIP) on a marginal tax rate basis. That tax would be calculated first and apportioned, and then the balance of the tax would be apportioned among the other assets according to the general rule.

Subsection 1(b)(2)

This subsection confirms that the general statutory scheme of equitable apportionment is purely a "default" rule. In other words, equitable apportionment is always subject to a decedent's right to direct a different method of allocating estate tax liability.

The first sentence permits a decedent to override equitable apportionment in either a testamentary *or* an inter vivos instrument. (*See* subsection (b)(3) below, and comment following, regarding conflicting provisions in different instruments.) This reflects the reality that the cornerstone of many modern day estate plans is not the last will and testament but the revocable living trust.

The subsection also makes clear that no matter which document contains the tax apportionment clause, it must dispose of or create an interest in property. Thus, "stand alone" documents that purport to direct the allocation of estate tax liability, but that are not part of a larger instrument disposing of or creating an interest in property, do not suffice to override equitable apportionment.

This subsection also requires that the direction to use a different manner of apportionment must be specific. It does not, however, purport to define precisely what type of language is required. In addition, subsection (b)(2) permits the decedent not only to direct a different manner of apportionment, but also to grant another person a discretionary power to determine how the tax liability is to be allocated. Finally, under the second sentence of this subsection, a decedent's direction as to the manner of apportionment is limited to the tax on the property passing under the instrument containing the direction, unless the document specifically provides that it is to apply to other property.

Subsection 1(b)(3)

This subsection addresses what happens when there is a conflict between the estate tax apportionment provisions of different documents.

Where the documents are executed by the same person, the instrument disposing of or creating an interest in the subject property controls. For example, if a will and a revocable trust contain conflicting provisions, the will would control the apportionment of taxes on the probate property, and the trust would control how taxes are to be allocated on the trust's assets.

If instruments executed by the same person conflict with respect to the apportionment of

taxes on property disposed of or created by *neither* instrument, the instrument executed or amended most recently controls. If the instruments were most recently executed or amended contemporaneously, and one of the instruments is a will or codicil, the will or codicil controls. Thus, for example, if both a will and a revocable trust purported to direct the apportionment of taxes on joint tenancy property, the most recently executed or amended document would prevail but, if the documents were executed or amended contemporaneously, the will would control.

If the conflicting provisions appear in documents executed by *different* people, the direction of the person in whose estate the property is included controls. For example, suppose a testator created a QTIP trust for his or her surviving spouse and directed that the estate taxes generated by inclusion of the QTIP trust assets in the surviving spouse's estate were to be paid from the surviving spouse's assets other than the QTIP. Suppose further that the surviving spouse's own will provided that the taxes incurred on the QTIP assets were to be paid from the QTIP assets themselves. Under this subsection, because the QTIP trust is included in the surviving spouse's estate, the direction in the surviving spouse's will controls.

Subsection 1(d)

Subsection 1(d) provides that if a deduction, exemption, or credit is allowed because of the relationship of a person to the decedent (e.g. a marital deduction to a surviving spouse), or because of the purpose of the gift (i.e. a charitable deduction for a gift to a charity), then such property is to receive the full benefit of the exemption, deduction, or credit. However, there is a significant exception to this rule in the case of split interests such as a life estate and remainder or a charitable remainder interest. In those cases where the property is subject to a prior present interest that is not deductible, the tax is apportioned against the entire corpus of the gift, even though the charitable deduction may thereby be reduced.

Subsection 1(h)

Subsection 1(h) provides the estate tax attributable to any split-interest in a property or fund, such as a life estate, term of years, or lifetime annuity interest and the remainder interest is chargeable against the corpus of the property or the funds that are subject to the split-interest.

For example, suppose that assets worth One Hundred Thousand Dollars ($100,000) are left in trust with the income to be paid to beneficiary A for a term of ten (10) years, and the corpus to be distributed to B at the end of the ten (10) year term. Assuming that the appropriate interest rate for the month in which valuation occurs is 7 percent (7%), the value of the ten (10) year term certain is Forty-nine Thousand One Hundred Sixty-eight Dollars ($49,168) and the value of the remainder interest is Fifty Thousand Eight Hundred Thirty-four Dollars ($50,834). Assume further that the estate tax to be apportioned against the trust is Twenty Thousand Dollars ($20,000). The apportioned tax is not divided between the ten (10) year income interest and the remainder interest so as to cause A and B to separately pay a portion of the tax. To do so would work a hardship on both A and B since A would have to pay a significant estate tax before receiving any income, and B would be compelled to pay a tax but would not receive the corpus for ten (10) years. Instead, the

entire tax is to be paid from the underlying corpus or fund. Thus, the Trustee would pay the Twenty Thousand Dollars ($20,000) of apportioned tax from the trust fund itself. The reduction of the corpus by Twenty Thousand Dollars ($20,000) for the payment of the tax means that the remaining trust fund is Eighty Thousand Dollars ($80,000) and there will be a corresponding reduction in income to be earned by the trust. This effectively amortizes the tax allocable to the income interest.

Subsection 1(i)

Subsection 1(i) provides that if an estate qualifies for the Section 2032A Special Use Valuation, the benefit of the reduction in value, and the corresponding reduction in tax, will inure to the benefit of the recipient of the qualifying property. This is accomplished by computing the tax on the estate without any special use valuation. The tax computed without using the special use valuation is then allocated among all of the assets, including the 2032A property at its reduced value, and the tax allocated is then reduced by the amount of the taxes saved.

If the amount of the tax savings is greater than the tax originally allocated to the property, then the excess tax savings is allocated to the other estate beneficiaries. If later there is a disqualifying sale or the qualified use ceases, the recapture tax is equitably apportioned among the persons who have an interest in the portion of the qualified real property to which the additional tax is attributable in proportion to their interests.

Subsection 1(j)

Subsection 1(j) provides certain "qualified family owned business interests" may be entitled under IRC Section 2057 to a deduction from the gross estate up to $625,000. In order to assure that the qualifying property and its owners receive the benefit of this deduction, a computation is used which is identical to that applied to 2032A special use valuation property as explained in the comment to subsection (i) above.

Subsection 1(k)

Subsection 1(k) provides that in certain cases a qualifying estate can elect to pay estate tax attributable to the decedent's interest in a closely held business in up to ten annual installments with the first installment not due until five years after the estate tax return is filed. Interest is charged on the unpaid balance of the tax due until all installments are paid. Subsection 1(k) directs the taxes, interest, and any penalties to the recipient of the property that is the subject of the extension for payment.

Subsection 1(m)

Subsection 1(m) requires the representative to seek recovery from a person interested in the estate, the estate tax apportioned to the person with respect to property not in the possession of the

representative and in which such person has an interest. Such obligation does not commence until the expiration of ninety (90) days from the date the underlying estate tax liability is finally determined. Thus, such ninety (90) day period would not commence until any administrative or judicial appeal of such estate tax liability have been exhausted.

Such obligation is subject to three specific exceptions. First, such obligation may be waived by other parties who would benefit from such recovery. Secondly, it may be waived by the instrument under which the representative derives powers. Finally, the Committee was concerned that this subsection not impose on the representative either an unjustifiably onerous or unreasonable obligation or an undue exposure to personal liability. Consequently, the representative, prior to initiating an action otherwise obligated under this subsection, should weigh the costs of such action against the amount and likelihood of a potential recovery. In the event, in the reasonable judgment of the representative, such recovery action is not cost effective, the representative should not pursue such recovery. It is intended that the judgment of the representative in this regard be sustained absent an abuse of the representative's discretion.

Subsection 1(n)

Subsection 1(n) provides that if any amount of estate tax apportioned against a person interested in the estate is not collected, such unrecovered amount shall be apportioned against the other persons interested in the estate in the manner provided in subsection (b)(1), i.e., in the same manner the estate tax liability was initially apportioned, save that such person interested in the estate with respect to which such tax liability is not collected shall be excluded in such reapportionment. Any person who is charged with or pays such reapportioned amount has a right of reimbursement from the person who was charged with the estate tax which was reapportioned. Such right of reimbursement may be enforced by the representative. It is also enforceable by the person charged with the estate tax which was reapportioned, provided the representative has either assigned such right to the person charged with the tax or six months have expired since such person charged with the tax has paid such tax and there are no then pending judicial proceedings in which the representative is pursuing the same right of reimbursement.

Sections to be repealed

79-15,120. Same; reimbursement of tax from estate, when. If the tax or any part of the tax is paid by, or collected out of, that part of the estate passing to or in the possession of any person other than the personal representative in their capacity as personal representative, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts or other charges against the estate. It is the purpose and intent of this act that so far as practicable and unless otherwise directed by the will of the decedent, the tax shall be paid out of the estate prior to the distribution of the estate.

History: L. 1999, ch. 79, § 7; July 1.

79-15,121. Same; recovery of tax from insurance proceeds, when. Unless the decedent otherwise directs by will or trust, if any part of the gross estate on which tax has been paid consists of the proceeds of policies of insurance on the life of the decedent receivable by a beneficiary other than the personal representative, the personal representative shall be entitled to recover from such beneficiary such portion of the total tax paid as the proceeds of such policies bear to the taxable estate. If there is more than one such beneficiary, the personal representative shall be entitled to recover from such beneficiaries in the same ratio. In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed on federal form 706 under section 2056 of the internal revenue code, relating to marital deduction, this section shall not apply to such proceeds except as to the amount of such proceeds in excess of the aggregate amount of the marital deductions allowed under such section.

History: L. 1999, ch. 79, § 8; July 1.

79-15,122. Same; recovery of tax from certain marital deduction and other property recipients. Unless the decedent otherwise directs by will or trust, if any part of the gross estate on which the tax has been paid consists of the value of property included in the gross estate under section 2041 of the internal revenue code, the personal representative shall be entitled to recover from the person receiving such property by reason of the exercise, nonexercise or release of a power of appointment such portion of the total tax paid as the value of such property bears to the taxable estate. If there is more than one such person, the personal representative shall be entitled to recover from such persons in the same ratio. In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section 2056 of the internal revenue code, relating to marital deductions, this section shall not apply to such property except as to the value of such property reduced by an amount equal to the excess of the aggregate amount of the marital deductions allowed under section 2056 of the internal revenue code over the amount of proceeds of insurance upon the life of the decedent receivable by the surviving spouse for which proceeds a marital deduction is allowed under such section.

History: L. 1999, ch. 79, § 9; July 1.

79-15,123. Same; recovery of tax from certain marital deduction property recipients. (a) (1) If any part of the federal gross estate consists of property the value of which is includable in the federal gross estate by reason of section 2044 of the internal revenue code, relating to certain property for which marital deduction was previously allowed, the personal representative shall be entitled to recover from the person receiving the property the amount by which the total tax imposed by K.S.A. 79-15,102, and amendments thereto, exceeds the tax which would have been imposed by K.S.A. 79-15,102, and amendments thereto, if the value of such property had not been included in the gross estate.

(2) Subsection (a)(1) shall not apply with respect to any property to the extent that the decedent specifically indicates by will or trust an intent to waive any right of recovery with respect to such property.

(b) For purposes of this section, if there is more than one person receiving the property, the right of recovery shall be against each such person.

(c) In the case of penalties and interest attributable to additional taxes described in subsections (a) and (b), rules similar to subsections (a), (b) and (c) shall apply.

History: L. 1999, ch. 79, § 10; L. 2000, ch. 24, § 3; July 1.

79-15,124. Same; recovery of tax from certain life estate property recipients. (a) (1) If any part of the gross estate on which tax has been paid consists of the value of property included in the gross estate by reason of section 2036 of the internal revenue code, relating to transfers with retained life estate, the decedent's estate shall be entitled to recover from the person receiving the property the amount which bears the same ratio to the tax imposed by K.S.A. 79-15,102, and amendments thereto, as the value of such property bears to the taxable estate.

(2) Subsection (a)(1) shall not apply with respect to any property to the extent that the decedent by will or revocable trust specifically indicates an intent to waive any right of recovery under this provision with respect to such property.

(b) For purposes of this section, if there is more than one person receiving the property, the right of recovery shall be against each such person.

(c) In the case of penalties and interest attributable to the additional taxes described in subsection (a), rules similar to the rules of subsections (a) and (b) shall apply.

(d) No person shall be entitled to recover any amount by reason of this section from a trust to which section 664 of the internal revenue code applies, determined without regard to this section.

History: L. 1999, ch. 79, § 11; L. 2000, ch. 24, § 4; July 1.

Kansas Department of Social and Rehabilitation Services

Janet Schalansky, Secretary

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Senate Judiciary Committee
February 7, 2001

Testimony on Senate Bill 119

Health Care Policy
Laura Howard, Assistant Secretary
785.296.3773

Kansas Department of Social and Rehabilitation Services
Janet Schalansky, Secretary

Senate Judiciary Committee
February 7, 2001

Testimony in Favor of Senate Bill 119

Mister Chair and members of the Committee, I am Laura Howard, Assistant Secretary of Health Care Policy in the Kansas Department of Social and Rehabilitation Services (SRS). Thank you for the opportunity to appear and testify today in support of Senate Bill 119.

SB 119 is the final piece in a series of statutory changes that have occurred since the Mental Health Reform Act was enacted in 1990. SB 119 extends to Children-in-Need-of-Care (CINC) cases, juvenile offender (JO) cases and misdemeanor cases the requirement that community mental health screenings occur prior to admission to state psychiatric hospitals. This will result in consistent admission criteria for all of the populations served at our state psychiatric hospitals.

SB 119 would require that before a court could order a person into one of our state psychiatric hospitals, the person would have to be either personally seen or their records and circumstances reviewed by a psychiatrist, psychologist or other qualified mental health professional employed by a participating Community Mental Health Center (CMHC). The purpose of this screening is to determine whether the needs of the person and the court's requirements can be met by community resources, rather than incurring the delays and expenses of placing the person in a state hospital.

If the CMHC determines that the person should be sent to a state psychiatric hospital, the CMHC must issue a written statement to the court and to the state psychiatric hospital and then arrange admission to the state hospital. Thereafter, the CMHC remains involved during the course of the patient's hospitalization and assists in the discharge and transfer of the person back to court and to any required follow-up care in the community.

Sections 1 through 6 of the bill deal with: competency to stand trial, commitments in cases of incompetency to stand trial, evaluations, and treatment in lieu of other dispositions after conviction. In felony cases, SB 119 does not change the direct commitment of persons to the state security hospital. However, in misdemeanor cases, SB 119 requires a written statement from a qualified mental health professional be filed with the court before a person charged with a misdemeanor may be admitted to a state psychiatric hospital. Typically when mental health issues are raised, the charges often involve trespassing, petty theft, simple assault, or disturbing the peace -- and are often a prelude to civil commitment proceedings. SB 119 will likely shorten the time between being charged with such crimes and the civil commitment proceeding at considerably less cost and delay.

Sections 10 thru 13 of the bill require the same process in juvenile offender cases.

Sections 7 thru 9 of the bill provide for CMHC screenings in child-in-need-of-care cases and juvenile offender cases when evaluations and possible inpatient psychiatric treatment of those children are considered. We believe that only in rare cases and when it is absolutely necessary, should children be sent to a state hospital. We have and are continuing to require CMHCs to expand their capacity to serve children in their homes and communities. The requirements of this bill would foster that progress.

The other thing that you may notice about this bill is that where the word "institution" appears in current law it is replaced with the term "facility." We wish to no longer convey the message that mental health treatment should be provided in a place far away from home, where people are segregated away from society, and remain there for long periods of time. Rather, we wish to convey the message that treatment should be provided in a facility which is appropriate to the person's needs. Such treatment may be outpatient in nature and integrated in the local community or short term treatment on an inpatient basis.

Thank you for your consideration of this bill. I would be happy to answer any questions.