Approved
Date: 2/7/02

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson Senator Vratil at 9:40 a.m. on February 6, 2002 in Room 123-S of the Capitol.

All members were present.

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

Conferees appearing before the committee:
Senator Barbara Allen
Lynaia South, Juvenile Justice Authority (JJA)
Randy Hearrell, Office of Judicial Administration (OJA)
Paul Davis, Kansas Bar Association (KBA)
Pat Scalia, Board of Indigents Defense

Others attending: see attached list

The minutes of February 5th meeting were approved on a motion by Senator Donovan, seconded by Senator O'Connor. Carried.

Bill introductions:
Conferee Allen requested introduction of a bill which would strengthen security requirements for obtaining a driver's license.(attachment 1) Senator Schmidt moved to introduce the bill, Senator Adkins seconded. Carried.

Senator Schmidt requested introduction of a conceptual bill which would "establish a state grants program designed to provide grants to local law enforcement units that are carrying a disproportionate share of the cost of methamphetamine enforcement and it would pay for those grants by redirecting a portion of the state's forfeiture money to that purpose." (no attachment) Senator Schmidt moved to introduce the bill conceptually, Senator Donovan seconded. Carried.

Conferee South requested introduction of the following bills which would: state when legal custody of a juvenile offender ends; define "juvenile corrections officer"; implement a new statute to set training requirements for certification and continued training of juvenile corrections officers; define powers and duties of juvenile corrections officers; and include medical condition of a juvenile offender as a reason to modify a sentence. (attachment 2) Senator Haley moved to introduce the bills, Senator O'Connor seconded. Carried.

Senator Vratil requested introduction of a bill, on behalf of Senator Lynn Jenkins, regarding Sexual Offender Community Notification. The bill would require a mailed or posted flyer be sent to communities where a sexual offender is relocating. (attachment 3) Senator O'Connor moved to introduce the bill, Senator Adkins seconded. Carried.

Senator Goodwin requested introduction of two bills. The first would make the 19th Judicial District County Attorney, a District Attorney, and the second would place a moratorium on the administration of the death penalty. She detailed the underlying purpose for each bill.(no attachment) Following discussion, Senator Goodwin moved to introduce both bills, Senator Oleen seconded. Carried.

The Chair announced several new bills assigned to each of the Subcommittees.(attachment 4)

Senator Umbarger requested a bill that would amend the child endangerment law making it a felony violation when a child is recklessly endangered. He detailed the underlying purpose for the bill.(no attachment) Following discussion, Senator Umbarger moved to introduce the bill, Senator Schmidt seconded. Carried.

Senator Adkins discussed a two part bill relating to Juvenile Intake and Assessment and requested introduction of the bill.(no attachment) Following brief discussion, Senator Adkins move to introduce the bill, Senator O'Connor seconded. Carried.

The Chair briefly discussed a Report of the Secretary of SRS Task Force Concerning Persons Non-Restorable to Competency, a copy of which was handed out to Committee members.(attachment 5)

SB 399–CINC; appointment of counsel

Conferee Hearrell testified in support of **SB 399**, a bill which allows a court to appoint a second attorney to represent a child in a CINC case. He provided background on the bill and discussed it's provisions. (attachment 6) Discussion followed.

Conferee Davis testified in opposition to **SB 399.** He discussed why the KBA feels the bill is unnecessary and untimely.(attachment 7) Lengthy discussion followed.

SB 400–probate code; residence of administrator

Conferee Hearrell testified in support of **SB 400**, a bill which would authorize a court to appoint a non-resident to serve as administrator or executor of a Kansas estate, when the non-resident has appointed a resident as agent, in writing. He discussed the bill's provisions and requirements. (attachment 8)

SB 412–aid to indigent defendants

Conferee Scalia testified in support of **SB 412**, a bill which would amend current law to require persons requesting representation by a public defender to pay an application fee of $50. She summarized the bill and discussed it's fiscal impact.(attachment 9)

The meeting adjourned at 10:33. The next scheduled meeting is February 7, 2002.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: Feb 6, 2002

NAME	REPRESENTING
Meaghan Danning	Keys for Networking, Inc.
Pat Scalia	SBIDS
Jana El-Koubysi	SBIDS
Bill Lucas	Murder Victims Families for Reconciliation
Ruby M. Hearrell	Judicial Council
R.S. McKenna	SRS
Scott Bechard	KCDAA
Connie Burns	Whitney B Damron, PA
Ami Hyten	JUDICIAL BRANCH
Timarie Walters	KDMJA ASSOC.
Lynaia South	JJA
Helen Pedigo	Governor's Office
Brenda Harmon	KSC
Joe Herold	KSC
Paul Davis	KBA
Cindy D'Arcole	Kansas Action for Children
Cathy McMorrow	KTLA
Mark Gleeson	Judicial Branch
Bill Brady	Ks Govt Consulting
David Wysong	citizen

Barbara Allen
Feb. 6, 2002

I'm here to request introduction of a bill that would strengthen the security requirements for obtaining a driver's license or nondriver's identification card in Kansas. This is a conceptual introduction - I do have a draft, but it is not in its final form.

Today, Kansas requires a photograph, but no s.s. # or fingerprint, in order to obtain a driver's license or nondriver's i.d card. We've all heard stories of persons coming to Kansas just to get fake i.d.'s, because it's so easy to get them. The bill will amend state law so that applicants for driver's licenses and identification cards in Kansas will receive a <u>temporary</u> license or i.d. card until the Department of Revenue verifies the identity of the applicant, including that person's social security #.

The bill will double the fees associated with obtaining a driver's license or i.d. card, which will cover any costs associated with upgrading the infrastructure necessary to verify s.s. #'s.

I'm working with the Johnson County District Attorney, a local banker, and the Dept. of Revenue on this bill. I realize it goes in the opposite direction of the interim's committee's bill with regard to driver's licenses. However, as a recent victim of bank fraud, I am convinced we should make it harder, not easier, to get false i.d. in Kansas. We should be <u>strengthening</u> the security requirements to obtain a driver's license or i.d. card.

STud
2-6-02
att 1

Juvenile Justice Authority

Presentation to the Senate Judiciary Committee
Agency 2002 Legislative Proposals

February 6, 2002

Albert Murray, Commissioner

SJud
attx
2-6-02

Proposal 1:

Juvenile Offenders Placed in Custody of Commissioner – When Legal Custody Ends

SUMMARY

This proposal amends K. S. A. 38-1664(b) to clarify that legal custody of a juvenile offender by the Commissioner is terminated once the juvenile is placed back at home

Fiscal impact: This could have a long-term impact of reducing State General Fund money used for purchase of service. The agency does not know what that might be at this time.

Policy Implications and Impact on the Agency Strategic Plan: Effective management of juvenile offenders. This provides a limit on the time an offender is in the Commissioner's custody. Now, offenders may be placed in the Commissioner's legal custody for years even when the child is physically at home.

2-7

Proposal 2(a): Define "juvenile corrections officer".

SUMMARY

This proposal would amend K.S.A. 38-1602 to add a definition for juvenile corrections officers to include juvenile corrections officers and juvenile corrections specialists working at a juvenile correctional facility.

Fiscal impact: The fiscal impact of this proposal can be absorbed within agency resources.

Policy Implications and Impact on the Agency Strategic Plan: This proposal assists in improving public safety and professionalism of the juvenile correction officer by defining powers and duties. This and the following proposals are also related to SB 300 which adds Safety and Security officers to those employees who are required to pass a pre-employment physical.

Proposal 2(b): Juvenile Corrections Officer training

SUMMARY

This proposal would implement a new statute that would set training requirements for certifying juvenile corrections officers at juvenile correctional facilities and require annual, continued training. The proposal is patterned after K. S. A. 75-5212.

Fiscal impact: The fiscal impact of this proposal can be absorbed within agency resources.

Policy Implications and Impact on the Agency Strategic Plan: This proposal assists in improving public safety and professionalism of the juvenile correction officer class by defining powers and duties.

Proposal 2(c): Powers and duties of juvenile corrections officers.

SUMMARY

This proposal would implement a new statute that would define the powers and duties of a juvenile corrections officer. The proposal is patterned after K. S. A. 75-5247a.

Fiscal Impact: The fiscal impact of this proposal can be absorbed within agency resources.

Policy Implications and Impact on the Agency Strategic Plan: This proposal assists in improving public safety and professionalism of the juvenile correction officer class by defining powers and duties.

Proposal 3: Sentence modification to include medical reasons

SUMMARY

This proposal would amend K. S. A. 38-1665 to include medical condition of a juvenile offender as a reason to modify a sentence.

Fiscal impact: The fiscal impact of this proposal would be a transfer of responsibility from the extraordinary medical expense fund (state general fund located at SRS) to a family insurance policy, if applicable, or Medicaid funding, if the offender is eligible.

Policy Implications and Impact on the Agency Strategic Plan: This proposal assists in improving public safety by allowing an exception in the law for those convicted juvenile offenders sentenced to a juvenile correctional facility who are later overtaken by a serious life-threatening condition, such as cancer. This situation happens once or twice per year at JJA. This amendment would allow the agency to seek sentence reduction in order to release the more vulnerable offender away from violent and serious offenders in the facility. It would also allow offender eligibility for a medical card. Presently, the facility may place the offender on a medical pass, but the facility and the agency still retains legal custody as well as financial responsibility for the care and treatment of the juvenile offender, although insurance is utilized to the extent possible.

To: Sen John Vratil

From: Lynn Jenkins

Date: Feb 5th

Re: Sexual Offender Community Notification Bill Introduction

Note: John, could you please request a committee bill for me regarding the Sexual Offender Community Notification? I can direct Gordon Self to some states that have language we could borrow, but I have not had the opportunity to get with him yet. Basically my approach would be to require a mailed or posted flyer to be sent to communities where a sexual offender is relocating. Along with the notification would be some educational information regarding offenders. The change is requested simply to ensure that members of the public can protect themselves and their families from dangerous sex offenders residing in their community. Thanks for your help! Lynn

Jud
2-6-02
att 3

Senate Judiciary Committee
1/22/02

Bills Assigned to Sub-Committees

Senator Pugh:

SB 16 - concerning CINC; temp. custody hrg.
SB 26 - asset seizure and forfeiture; civil remedies
SB 295 - aggravated escape from custody
SB 300 - JJA; req. for employment
SB 301 - JJA; trial home visits
SB 466 - Alcoholic beverages: gallonage tax
SB 491 - Tort Claims Act; re: definitions
SB 492 - right of aliens to inherit or transmit real property

Senator Adkins:

SB 136 - wage garnishment; assignment of accounts
SB 141 - insurance; fraudulent acts
SB 174 - juvenile offender detention; payment of expenses
SB 335 - parole board; qual. of members, pro-tem members
SB 486 - common law marriages
SB 487 - relating to burglary
SB 493 - relating to RR accidents;drug & alcohol testing of train crew members

Senator Schmidt:

SB 297 - Uniform Trust Code
SB 262 - profits from crimes; civil action to recover
SB 269 - confinement in county jail; reimbursement
SB 339 - early medical release of prisoners
SB 489 - anhydrous ammonia; immunity from liability
SB 476 - exams of victims of sexual assault

SJud 2-6-02 attch 4

BILL GRAVES, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

JANET SCHALANSKY, SECRETARY

January 28, 2002

Senator John Vratil, Chair
Senate Judiciary Committee
Room 120-S, Capitol Building
Topeka, Kansas 66612

Dear Senator Vratil:

This report has been provided to the Kansas Legislature as required by new Section 9 of Chapter 208 of the 2001 Session Laws of Kansas. This new section incorporates 2001 HB 2084, which was included in 2001 HB 2176, as passed. The Department convened a task force and assigned to its members the responsibility to study certain current programs and laws related to involuntary commitment. Those laws apply to alleged offenders with disabilities that render such persons incompetent to stand trial, but which do not meet criteria for involuntary civil commitment under the mental illness laws. The task force was directed to make recommendations concerning the adequacy of current programs, services, and laws to protect the public safety and provide services and supports to such persons.

I am providing a copy of this report to you and members of the Senate Judiciary Committee as I thought it might be of interest to you.

Please let me know if you have questions regarding the report.

Sincerely,

Janet Schalansky

Janet Schalansky, Secretary
Department of Social and Rehabilitation Services

Enclosure
JS:bw

cc: Members of the Senate Judiciary Committee

Jud 2-6-02 Att 5

BILL GRAVES, GOVERNOR OF THE STATE OF KANSAS

KANSAS DEPARTMENT OF SOCIAL
AND REHABILITATION SERVICES

915 SW HARRISON STREET, TOPEKA, KANSAS 66612

JANET SCHALANSKY, SECRETARY

January 28, 2002

Pat Saville, Secretary
Kansas Senate
Room 360-E, Capitol Building
Topeka, KS 66612

Janet Jones, Chief Clerk
Kansas House of Representatives
Room 477-W, Capitol Building
Topeka, KS 66612

Dear Secretary Saville and Chief Clerk Jones:

This report is being provided to the Kansas Legislature as required by new Section 9 of Chapter 208 of the 2001 Session Laws of Kansas. This new section incorporates 2001 HB 2084, which was included in 2001 HB 2176, as passed. The Department convened a task force and assigned to its members the responsibility to study certain current programs and laws related to involuntary commitment. Those laws apply to alleged offenders with disabilities that render such persons incompetent to stand trial, but which do not meet criteria for involuntary civil commitment under the mental illness laws. The task force was directed to make recommendations concerning the adequacy of current programs, services, and laws to protect the public safety and provide services and supports to such persons.

The task force completed its work and delivered its report on December 14, 2001. The report and its recommendations are being submitted to the Kansas Legislature for its consideration.

Please let me know if you have questions concerning the report.

Sincerely,

Janet Schalansky

Janet Schalansky
Secretary

JS:MH:eb:bw

Enclosure

Kansas Department of Social and Rehabilitation Services

Report of the Secretary's Chapter 208, Section 9 Task Force

Concerning Persons Non-Restorable to Competency

December 14, 2001

Janet Schalansky,
Secretary of Social and Rehabilitation Services

Contents:

Participants of the Secretary's Chapter 208, Section 9 Task Force

Name:	Representing:
James L. Johnson, Chair	Sunflower Diversified Services, Inc. Great Bend
Kathy Lobb	Self Advocacy Coalition of Kansas Lawrence
Jeanne Abraham-Lunz	Self Advocacy Coalition of Kansas Lawrence
Barb Bishop	Self Advocacy Coalition of Kansas Lawrence
Jane Rhys	Kansas Council on Developmental Disabilities, Topeka
Ed Collister	Kansas Judicial Council Topeka
Jessica Kunan	Kansas Judicial Council Topeka
Deb Schwarz	Kansas Department on Aging Topeka
Doug McNett	Pawnee County Attorney's Office Larned
Jim Germer	Kansas Advocacy & Protective Services, Inc., Topeka
Matthew Stowe	Beach Center, University of Kansas Lawrence
Tara Cunningham	COMCARE of Sedgwick County Wichita
Kathy Stiffler	Individual Support Systems, Inc. Topeka

John Randolph	Mental Health Center of East Central Kansas, Emporia
Paul Klotz	Association of Community Mental Health Centers, Inc., Topeka
Gordon Criswell	Wyandotte Community Developmental Disabilities Center, Kansas City
Jean Krahn	Kansas Guardianship Program Manhattan
Randy Proctor	Osawatomie State Hospital Osawatomie
Betsy Patrick	Osawatomie State Hospital Osawatomie
Gary Daniels	Parsons State Hospital & Training Center, Parsons
Linus Thuston	Parsons State Hospital & Training Center, Parsons
John House	Office of the General Counsel, Dept. of S.R.S., Topeka
Phil Ledford	Larned State Hospital Larned
Michael Deegan	Community Supports & Services, Dept. of S.R.S., Topeka
Greg Wintle	Community Supports & Services, Dept. of S.R.S., Topeka
Elizabeth Phelps	Community Supports & Services, Dept. of S.R.S., Topeka

Report to the Secretary
Concerning Persons Non-Restorable to Competency
(In response to Section 9 of Chapter 208 of the 2001 Session Laws of Kansas)

December 14, 2001

Madam Secretary:

Your task force met regularly over the course of approximately three months this past fall and carefully studied the provisions of Chapter 22, Article 33 of the Kansas Statutes Annotated, including the recent amendments to K.S.A. 22-3303. These amendments were enacted during the 2001 Legislative Session and appear at Section 8, Chapter 208 of the 2001 Session Laws of Kansas. Your task force also carefully studied the programs within S.R.S. (both those within institutional settings and those available through community based programs) which would be applicable to persons found not competent to proceed with criminal proceedings. Finally, your task force carefully studied how the S.R.S. systems respond to such persons now, both formally, in light of the current laws concerning incompetency, and informally, when those laws don't seem to provide further direction.

- Our conclusion is that the current laws, even as they were amended last Session, clumsily deal with such persons and makes understanding what actually happens in their circumstances difficult to follow and fully comprehend. We conclude that there exists a great deal of mis-understanding with regard to these matters, which the current laws contribute to. We further conclude that the current laws concerning these matters hinders, rather than helps, in ensuring the public's safety and the delivery of appropriate services to individuals who are not restorable to competency.

Finally, your task force carefully and fully considered five alternative approaches which might be adopted with regard to these individuals, and recommends to you what we refer to as the "services matching" approach.

The Problem With the Current Laws

We found that the current provisions of Article 33 create, at least on paper, for a small but significant number of persons who are not competent to proceed with criminal proceedings a "dead end." It is this apparent "dead end" that leads to feelings of frustration and the mis-understanding that there is nothing that can be done.

- For those persons who are not "mentally ill" (as that term is now defined for most persons who are not competent, even after the 2001 amendments, and as it was defined and understood in Article 33 proceedings for all defendants prior to the amendments that were passed last session), the law makes no provisions for what is to happen after the Secretary's required Chapter 59 petition is filed, but denied and dismissed. This is the "dead-end" that creates the mis-understandings that exist with regard to what actually happens to these individuals.

- The 2001 amendments to K.S.A. 22-3303 do not, for the overwhelming majority of persons who are found to be incompetent to proceed for reasons other than "mental illness," correct this problem.

- The 2001 amendments to K.S.A. 22-3303, by their limiting provisions, will apply to very few, if any, actual cases. We conclude that, contrary to what we presumed to have been the Legislature's expectation, the amendments will likely fail to fix the problem even with regard to those persons at which those amendments were aimed. Nor, do we conclude, that any

extension of those amendments would improve matters. Instead, we believe any extension would only make matters worse.

While the provisions in Article 33 that require a mental illness proceeding make good sense and lead to appropriate services for persons who are actually mentally ill, any attempt to "force-fit" persons who will not benefit from mental health services into that system will both drain and waste limited resources available to that system, and make it less likely that appropriate services will be timely provided to them. Not only do the present requirements that the Secretary file and prosecute a mental illness case on individuals for whom it is apparent at the outset that such proceedings will result only in wasted effort and expense seem silly, but by that very waste of time, effort and expense, the law creates a false sense that no appropriate resources exist. Such is simply not the case.

- We found that, in fact, many resources and programs already exist to serve such persons, and such services are capable of being delivered in ways that protect the public's safety, but because utilizing these alternative resources and programs depends upon informal means of obtaining access to them, a false understanding that there is "nothing that can be done" is fostered among persons who are not aware of the "informal" proceedings that often do take place in these cases.

Chapter 208, Section 8 Represents a False Solution to the Problem

Our conclusion was that the 2001 amendments to K.S.A. 22-3303 will not likely have much effect. To date, they have not been applied in any case of which we became aware of. Because

the provisions of the 2001 amendments apply in such narrow circumstances, we concluded that they will rarely, if ever, be actually applied. In the unlikely event that they were, we conclude that any positive effect these provisions might have will be far outweighed by the negative consequences they will likely generate, not the least of which would be the impact upon the individual who is "force fitted" into services and programs not geared to meet their needs. We also noted that the costs which would be associated with the application of the 2001 amendments would far exceed the costs that would otherwise be associated with a more appropriate solution.

- To keep a person institutionalized in a S.R.S. facility costs, on average, $160.00 per day. That adds up to $4,800.00 per month, and $57,600.00 per year!

- Only rarely would a person who is incompetent to stand trial require institutionalization in order to meet either their needs or the public's need for their safekeeping.

- Instead, community based programs designed to both manage and care for persons with disabilities costs only a fraction of the costs of their institutionalization.

The Problem Is Not So Large
That It Can Not Be More Efficiently Addressed

We found that the numbers of persons annually to whom Article 33 requirements apply are quite small. Strictly speaking, there are at most only a total of no more than 35 to 40 or so of these cases a year. We did hear from the representatives on our task force who are or have been prosecutors that there have been in the past, and likely continues to be, a few other cases which are never formally filed because of the false understandings that exist among many Judges and attorneys with regard to what actually can be done. We concluded, however, that in many of

those cases the same informal solutions that are utilized in the cases that actually do get filed, but that require "informal" resolutions, are being utilized in these cases as well, such that those unaccounted for cases become a "wash" in accounting for the numbers.

We found that in most of the 40 or so cases in which Article 33 requirements apply, that mental illness does account for the reason why the individual was found to be incompetent, and in those cases, mental health services are appropriate and are generally appropriately provided. It is the few cases, and as best as we could determine, in maybe only 10 or, at most, 15 cases a year that create the problems and mis-understandings. This figure accounts for all cases, including misdemeanors, juvenile offenses and felonies, in which a person is found to be not competent for reasons involving disabilities other than mental illness.

Of this 10 or 15 cases, at most only 1 or 2 cases a year, presents to S.R.S. serious concerns for public safety. In many years, we were advised that the number is actually zero cases that present serious concerns for public safety. For those 1 or 2 cases, S.R.S. deals with those individuals by arranging the appointment of a guardian and having the guardian admit the person to an inpatient facility, usually Parsons State Hospital. The charges pending against those persons may or may not have been of a serious nature. It is, instead, circumstances peculiar to that individual that often makes the person particularly dangerous. This small number of actual cases involved belies any necessity to try to deal with this problem through broadly worded statutory amendments. To do so only invites unforseen complications and difficulties.

Our Recommended Solution

We recognize that while the numbers of cases as a whole may be small, any one case

may be of significant concern to the local community in which it arises. We recognize the current "dead end" provisions cause considerable consternation in those cases where it arises. A solution is called for. In attempting to find one, we reviewed five principal approaches to solving this problem. One of those was the mental illness definition approach taken by the 2001 amendments to K.S.A. 22-3303. Other approaches reviewed included other civil commitment schemes, custodial approaches, automatic guardianships and a "match-making" approach. We compared how each of these approaches would "dove-tail" into current services and resources, and how each of these various approaches might be implemented and enforced.

- We concluded that an approach which provided a mechanism for "matching" individuals with existing services, from the full range of available services, everything from institutionalization to varying degrees of community supervision and assistance, and which provided for formal accountability in the context of legal proceedings to review the selected services, would best meet the requirements of providing for both public safety and the delivery of appropriate services to the individual.

We dubbed this the "services matching" approach. It would involve making a specified individual or agency initially responsible for determining what specific services were most appropriate to an individual who had been found incompetent, on whatever basis that finding had been made, and then, taking into account legitimate concerns for public safety, arranging for and ensuring the delivery of appropriate services. At the same time, we would require a mechanism whereby that decision-making person can be made to explain and justify their determinations, and we would require an opportunity for appropriate input to those determinations by the court and attorneys in the case from which the incompetency finding arose. Only when all parties were

satisfied that both concerns for public safety and the appropriateness of the services to be provided had been adequately addressed would we conclude the first phase of legal proceedings. Thereafter, we would recommend a process of ongoing review and revision of those services and safety concerns, overseen through judicial proceedings. We recommend that this process continue indefinitely, until such time as the defendant is either found to be competent, or all concerns about safety are resolved to the satisfaction of that judicial oversight.

- Only through this case-by-case approach, with judicial oversight, could we feel comfortable that appropriate, customized services would be provided in the safest and most effective and efficient manner.

Our recommended "services matching" approach is somewhat closely described by the Senate version of HB2084 (2001 Session), but we would recommend adding and using differing language to clarify the court's authority to oversee the provision of appropriate or necessary services and to issue orders of conditional release. (See our attached recommended statutory language.) We further recommend that someone be asked to take the lead in educating the Judges and attorneys who would be involved in such cases as to enforcement actions that are already available to them and which could be taken should the person fail to comply with any requirements placed upon them by the courts or by their treatment providers.

- We find that no approach, including institutionalization, can reduce to absolute zero the risk that a person who has been found not competent to proceed would not re-offend.

- Many services, including one-to-one supervision, are available through community based programs, even when the assessed risk of re-offense is determined to be high.

- The actual risk of re-offense is often quite different from what some persons

assume that risk to be.

The greatest concern we had with our recommended solution was the identity of the person or agency to whom would be given the initial responsibility for determining needs, assessing the public's safety concerns, and "matching" the incompetent individual to services. We, therefore, recommend that initially, and until the original parties to the criminal court proceedings are satisfied, that responsibility be assigned to the Secretary of S.R.S. Thereafter, if a continuing need exists, we believe the responsibility for continued monitoring and decision making can be passed to a court appointed guardian. Doing so ensures continuing accountability in a formal manner, because of the on-going supervision a guardian can be provided by the court that appoints and oversees a guardianship.

While Kansas' current reliance upon an all-volunteer cadre of "public" guardians makes this secondary assignment more difficult, the small numbers involved has to date made this solution feasible. However, we did come to the conclusion that in the long run, Kansas will need to supplement that system with a limited, professional component, particularly so in order to be fair to the volunteers who participate in our current program, who should more appropriately handle other, less demanding, cases.

- We recommend that the State consider adopting some form of a professional public guardianship program that is financed by local and/or state funds. We recognize that the additional financial obligation that would entail is probably not feasible at this time, given the State's current fiscal situation, however, when we compared the costs of such a system with the costs that we anticipate would be associated with any expansion of the institutionization approach the Legislature started to take last Session, we became convinced that our approach

would be a cost savings measure in the final analysis. We recommend that another task force be assembled and given responsibility to explore how a limited, professional component to the State's guardianship resources could be developed and implemented in a manner which would supplement the State's current "all-volunteer" program.

We attach hereto copies of certain of the materials the task force reviewed, and the points of agreement we reached prior to making our recommendations and this report. Thank you for the opportunity to have served you in this manner.

Respectfully submitted,

James C. Johnson

On behalf of the Members of the Secretary's
Chapter 208, Section 9 Taskforce

We recommend the following amendments to K.S.A. 22-3303 and K.S.A. 22-3305:

22-3303. (1) A defendant who is charged with a felony and is found to be incompetent to stand trial shall be committed for evaluation and treatment to the state security hospital or to any appropriate county or private ~~institution~~ treatment facility. A defendant who is charged with a misdemeanor and is found to be incompetent to stand trial shall be committed for evaluation and treatment to a state psychiatric hospital or to any appropriate ~~state,~~ county or private ~~institution~~ treatment facility. Any such commitment shall be for a period of not to exceed 90 days. Within 90 days after the defendant's commitment to such ~~institution~~ state hospital or treatment facility, the chief medical officer of such ~~institution~~ state hospital or treatment facility shall certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall ~~order~~ again commit the defendant to ~~remain in an~~ that or another appropriate state, county or private ~~institution~~ treatment facility for further care and treatment until the defendant either attains competency to stand trial or for a period of six months from the date of the original commitment, whichever occurs first. If such probability does not exist, the court shall order the defendant to remain in the state hospital or treatment facility where originally committed and shall order the secretary of social and rehabilitation services to ~~commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statues Annotated, and any amendments thereto. For such proceedings, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, who is likely to cause harm to self or others, as defined in subsection (f)(3) of K.S.A.2000 Supp. 59-2946, and amendments thereto. The other provisions of subsection (f)~~

~~of K.S.A. 2000 Supp. 59-2946, and amendments thereto, shall not apply~~ conduct an investigation concerning the circumstances of the defendant and, based upon the reasons for which the defendant was found not competent to stand trial and any other factors relevant to the defendant's circumstances, determine what services would be appropriate for the defendant, or what placement of the defendant involving the least restrictive setting would be appropriate, to meet both the needs of the defendant and that are consistent with public safety. Whenever such shall be appropriate, the secretary shall commence an involuntary commitment proceeding pursuant to either article 29 or article 29b of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, or a guardianship proceeding pursuant to article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto. The secretary shall report to the court, the defendant's attorney and to the county or district attorney of the county in which the criminal proceedings are pending, the secretary's findings, recommendations and actions concerning the defendant. Thereafter, the court shall set a hearing upon the secretary's report. At the conclusion of such hearing, the court may enter such orders as are appropriate, including ordering the secretary to further review and report upon the defendant's needs or community concerns, or to provide or cause to be provided such services as the secretary determines appropriate to meet the needs of the defendant. Upon a showing to the court that the defendant's needs are being met and that the public's safety is reasonably assured, including, when appropriate, by the exercise of continuing jurisdiction by a court pursuant to a care and treatment proceeding instituted pursuant to article 29 or article 29b of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, or a guardianship proceeding instituted pursuant to article 30 of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, the court shall conditionally release the defendant

and dismiss without prejudice the charges then pending against the defendant, and the period of limitation for the prosecution for the crime charged shall not continue to run until the defendant has been determined to have attained competency in accordance with K.S.A. 22-3302 and amendments thereto.

(2) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1), has not attained competency to stand trial within six months from the date of the original commitment, the court shall then order the secretary of social and rehabilitation services to ~~commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto. For such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (c) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A.2000 Supp 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, shall not apply~~ conduct an investigation concerning the circumstances of the defendant and, based upon the reasons for which the defendant was found not competent to stand trial and any other factors relevant to the defendant's circumstances, determine what services would be appropriate for the defendant, or what placement of the defendant involving the least restrict setting would be appropriate, to meet both the needs of the defendant and that are consistent with public safety. The secretary shall commence such involuntary commitment proceedings or guardianship proceedings as may be appropriate and report to the court, as provided for in subsection (1). Thereafter the court shall set a hearing upon the secretary's report and proceed as provided for in subsection (1).

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

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

22-3305. (1) Whenever involuntary commitment proceedings pursuant to article 29 or 29b of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 22-3303 and amendments thereto, ~~and~~ but the defendant is not committed to a treatment facility as a patient, the defendant shall remain in the ~~institution~~ treatment facility where committed pursuant to K.S.A. 22-3303 and amendments thereto, or where detained pursuant to the proceedings instituted pursuant to article 29 or 29b of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, and the secretary shall promptly notify the court, and the county or district attorney of the county in which the criminal proceedings are pending, within or as a supplement

to the secretary's report required by K.S.A. 22-3303 and amendments thereto, of ~~the~~ this result of the involuntary commitment proceeding. Thereafter, the court shall proceed as provided for in subsection (1) of K.S.A. 22-3303 and amendments thereto.

(2) Whenever involuntary commitment proceedings pursuant to article 29 or 29b of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 22-3303 and amendments thereto, and the defendant is committed to a treatment facility as a patient, but thereafter is determined to be appropriate to be discharged pursuant to the provisions of ~~care and treatment act for mentally ill persons~~ article 29 or 29b of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, the defendant shall remain in ~~the institution~~ treatment where committed pursuant to ~~K.S.A. 22-3303~~ either article 29 or 29b of chapter 59 of the Kansas Statutes Annotated, and amendments thereto, and the head of the treatment facility shall promptly notify the court and the county or district attorney of the county in which the criminal proceedings are pending that the defendant is appropriate to be discharged.

When giving such notification to the court and the county or district attorney ~~pursuant to subsection (1) or (2)~~, the head of the treatment facility shall include ~~in such~~ with that notification an opinion ~~from the head of the treatment facility~~ as to whether or not the defendant is now competent to stand trial. Upon request of the county or district attorney, the court may set a hearing on the issue of whether or not the defendant has been restored to competency. If no such request is made within 10 days after receipt of the head of the treatment facility's notice ~~pursuant to subsection (1) or (2)~~, the court shall order that the head of the treatment facility may discharge the defendant ~~to be discharged~~ from commitment ~~and shall dismiss without prejudice the charges~~

~~against the defendant, and the period of limitation for the prosecution for the crime charged shall not continue to run until the defendant has been determined to have attained competency in accordance with K.S.A. 22-3302, and amendments thereto.~~

Note: similar amendments should also be made to K.S.A. 38-1638 and K.S.A. 38-1639, within the Juvenile Offenders Code.

Secretary's Chap. 208, Sec. 9 Task Force
Points of Agreement Concerning Persons Not Restorable to Competency

1. The "definitions" approach taken by Chapter 208, Sec. 8, doesn't make much sense.

   - It is unlikely to make much difference given its limiting language. Few persons, if any, who are not restorable to competency are likely to come within its terms.

   - It fails to address, for the most part, the underlying problems presented by Article 33.

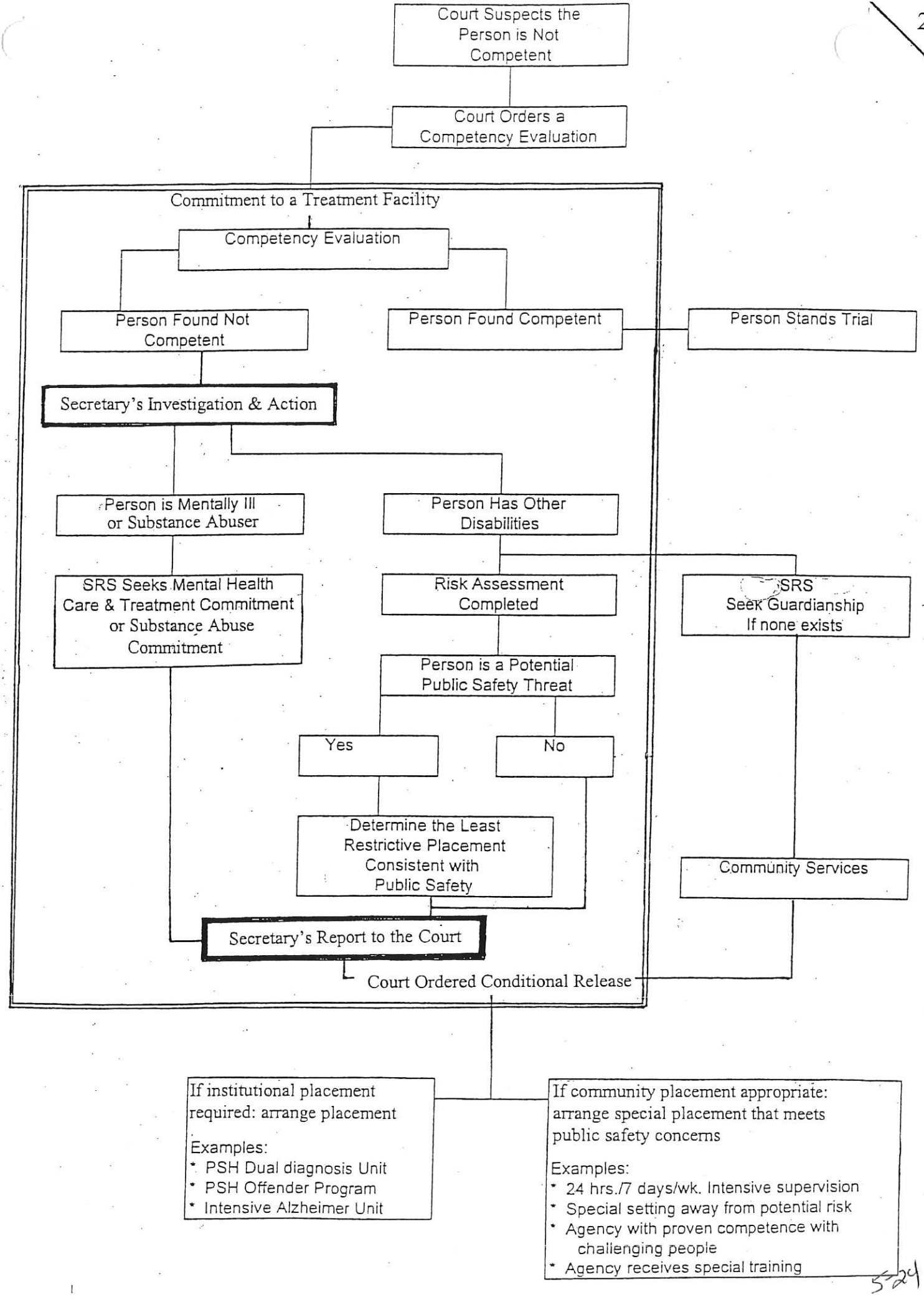
   - In concept, it necessarily burdens the mental health services delivery system and could result in significant, ill-affordable additional costs to that system, if expanded.

2. Any approach which attempts to deal with this complex problem in a simplistic "legal" way must, necessarily, approach persons who are not restorable to competency as a group (definitions, codes & automatic custodial concepts necessarily must be applied across a whole spectrum of persons to which the letter of the law would apply). However, the problem is, at heart, a case-by-case problem, which needs to be addressed with case-by-case solutions.

3. The numbers of persons who are not restorable that this problem involves is not so large that it can not be addressed on a case-by-case basis. To this point, that is what has been done informally whenever the "formal" solution provided for by law does not fit the circumstances of the individual at hand. However, the lack of a formal forum in which the solutions selected to deal with any specific situation can be discussed and critiqued has lead, in certain cases, to both some information being missed and to some parties being left out "of the loop."

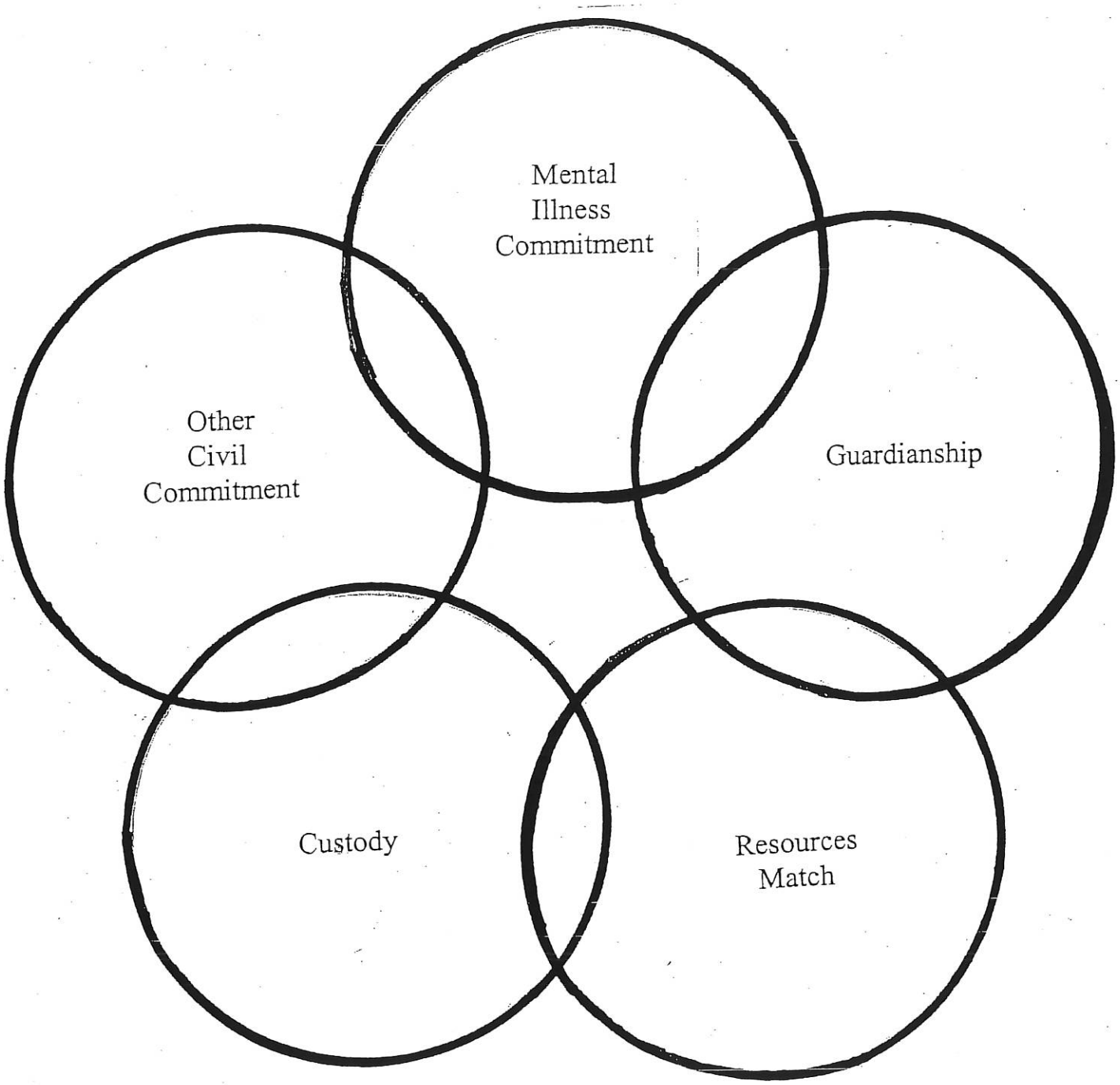
4. The solution to the problem of what to do with persons who are not restorable is one of management of their risk to "re-offend." As in all cases of risk management, the solution requires a balancing between a tolerance of the risk (a determined actual risk, as opposed to an assumed risk) and the costs associated with the management technique employed. In this regard, it must be acknowledged that no management technique that can be employed will reduce the actual risk to zero.

5. The ability of any system to manage risk is directly proportional to the resources available to be used in that effort. For this problem, there are considerable resources available, particularly with regard to community based programs that can manage and provide services to individuals who have been found not competent. Some gaps do still exist, however. Prominent among those gaps is a lack of qualified guardians, knowledgeable of the tools available to a guardian to "enforce" selected management options. This State's reliance upon an all-volunteer system of "public" guardians seriously hampers any program that depends upon having guardians in place to make key determinations, and often limits their understanding of how they might use the legal systems that are already in place. A professional supplement to Kansas' all-volunteer pool of guardians would significantly reduce this gap.


Court Suspects the Person is Not Competent
Court Orders a Competency Evaluation
Commitment to a Treatment Facility
Competency Evaluation
Person Found Not Competent
Person Found Competent
Person Stands Trial
Secretary's Investigation & Action
Person is Mentally Ill or Substance Abuser
Person Has Other Disabilities
SRS Seeks Mental Health Care & Treatment Commitment or Substance Abuse Commitment
Risk Assessment Completed
SRS Seek Guardianship If none exists
Person is a Potential Public Safety Threat
Yes
No
Determine the Least Restrictive Placement Consistent with Public Safety
Community Services
Secretary's Report to the Court
Court Ordered Conditional Release
If institutional placement required: arrange placement
Examples:
* PSH Dual diagnosis Unit
* PSH Offender Program
* Intensive Alzheimer Unit
If community placement appropriate: arrange special placement that meets public safety concerns
Examples:
* 24 hrs./7 days/wk. Intensive supervision
* Special setting away from potential risk
* Agency with proven competence with challenging people
* Agency receives special training

Appendix

Alternative Approaches to Dealing With the Incompetent Person:



Alternative Approaches to Dealing With the Incompetent Person:

1. Current Article 33 System (Mental Illness)

* What definition of mental illness?

* What to do about the non-mentally ill?

2. Other Civil Commitment

* Based on "mental incompetence"? How defined?

* Committed to where? (in-patient)

* Olmstead requirement for out-patient? Committed to where?

3. Resources Match (SRS/Senate 2084 Alternative)

* Accountability after matched placement?

4. In Custody of SRS

* What does that mean in an adult context?

5. Secretary of SRS as Legal Guardian

* Based upon a presumption of disability?

* What if the person is not disabled as defined in the guardianship code?

* Conservator too?

Reasons why someone might be incompetent to stand trial:

Juveniles:

1. Immaturity (young age)

   Note: K.S.A. 38-1602(a) - a "juvenile" who can be charged as an offender is someone who is age 10 and up.

   * may simply require that the child has to "grow-up" in order for them to become competent

Juveniles or Adults:

2. Doesn't understand or speak English

   * may require a translator

   * what about "cultural incompetency"?

3. Medical illness or other medical condition

   * including coma, quarantine, bed-fast and other medical conditions confining a person to a treatment facility of some type, or rendering them otherwise unable to participate in the criminal proceedings

4. Actively psychotic or otherwise impaired by reason of a mental illness

   * mental illness treatment may relieve those symptoms

5. Drug/Alcohol induced psychosis or other impairment

* detox may relieve those symptoms

6. Mental Retardation/Developmental Disability

* education may help

7. Organic brain dysfunction

* including brain injury, brain tumor, Alzheimer's Disease, etc. (but a condition that does not confine a person to a medical care facility)

8. ?_____

Article 33.—COMPETENCY OF DEFENDANT TO STAND TRIAL

22-3301. Definitions. (1) For the purpose of this article, a person is "incompetent to stand trial" when he is charged with a crime and, because of mental illness or defect is unable:

(a) To understand the nature and purpose of the proceedings against him; or

(b) to make or assist in making his defense.

(2) Whenever the words "competent," "competency," "incompetent" and "incompetency" are used without qualification in this article, they shall refer to the defendant's competency or incompetency to stand trial, as defined in subsection (1) of this section.

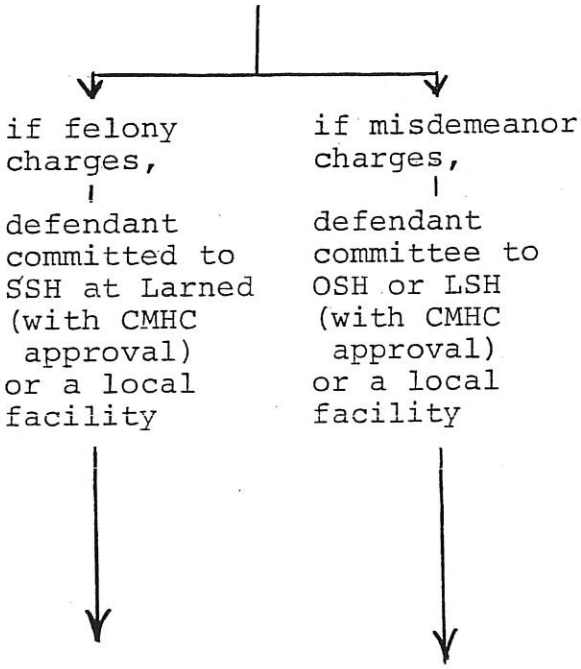
History: L. 1970, ch. 129, § 22-3301; July 1.

22-3302. Proceedings to determine competency. (1) At any time after the defendant has been charged with a crime and before pronouncement of sentence, the defendant, the defendant's counsel or the prosecuting attorney may request a determination of the defendant's competency to stand trial. If, upon the request of either party or upon the judge's own knowledge and observation, the judge before whom the case is pending finds that there is reason to believe that the defendant is incompetent to stand trial the proceedings shall be suspended and a hearing conducted to determine the competency of the defendant.

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

(3) The court shall determine the issue of competency and may impanel a jury of six persons to assist in making the determination. The court may order a psychiatric or psychological examination of the defendant. To facilitate the examination, the court may: (a) If the defendant is charged with a felony, commit the defendant to the state security hospital or any county or private institution for examination and report to the court, or, if the defendant is charged with a misdemeanor, commit the defendant to any appropriate state, county or private institution for examination and report to the court, except that the court shall not commit the defendant to the state security hospital or any other state institution unless, prior to such commitment, the director of a local county or private institution recommends to the court and to the secretary of social and rehabilitation services that examination of the defendant should

If it is suspected that the defendant is incompetent to stand trial, the court must suspend the criminal proceedings and determine the competency issue



be performed at a state institution; (b) designate any appropriate psychiatric or psychological clinic, mental health center or other psychiatric or psychological facility to conduct the examination while the defendant is in jail or on pretrial release; or (c) appoint two qualified licensed physicians or licensed psychologists, or one of each, to examine the defendant and report to the court. If the court commits the defendant to an institution for the examination, the commitment shall be for not more than 60 days or until the examination is completed, whichever is the shorter period of time. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding. Upon notification of the court that a defendant committed for psychiatric or psychological examination under this subsection has been found competent to stand trial, the court shall order that the defendant be returned not later than five days after receipt of the notice for proceedings under this section. If the defendant is not returned within that time, the county in which the proceedings will be held shall pay the costs of maintaining the defendant at the institution or facility for the period of time the defendant remains at the institution or facility in excess of the five-day period.

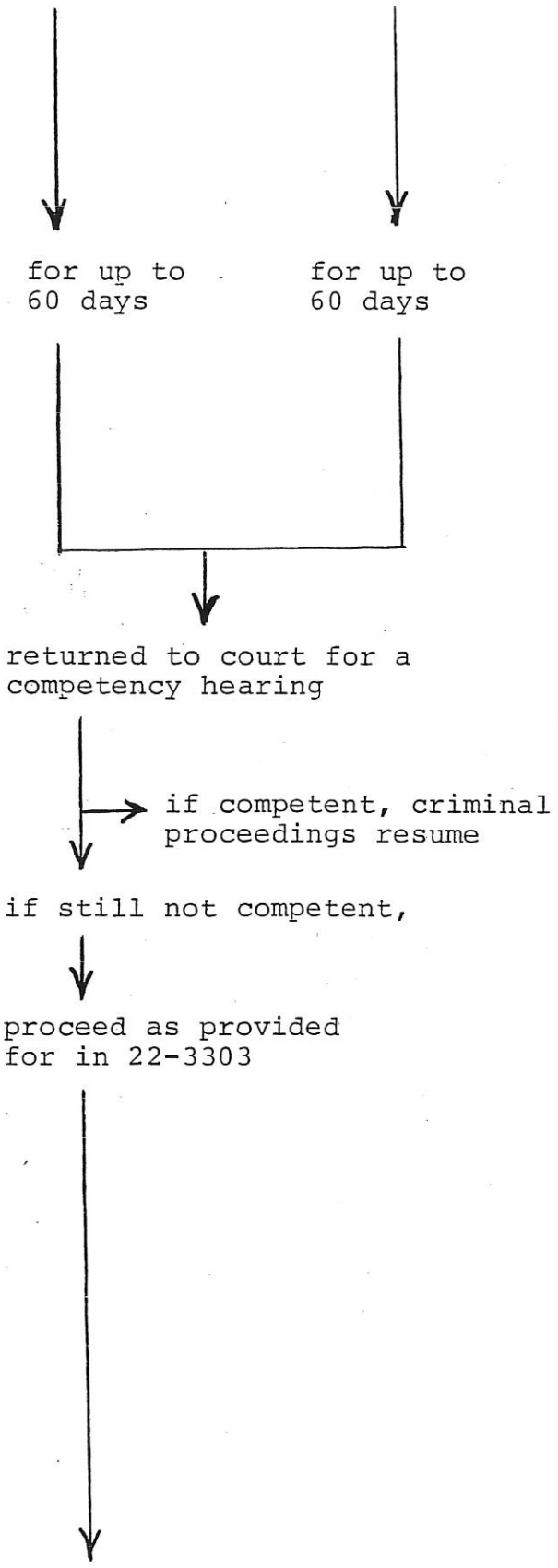
(4) If the defendant is found to be competent, the proceedings which have been suspended shall be resumed. If the proceedings were suspended before or during the preliminary examination, the judge who conducted the competency hearing may conduct a preliminary examination or, if a district magistrate judge was conducting the proceedings prior to the competency hearing, the judge who conducted the competency hearing may order the preliminary examination to be heard by a district magistrate judge.

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

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

(7) The defendant shall be present personally at all proceedings under this section.

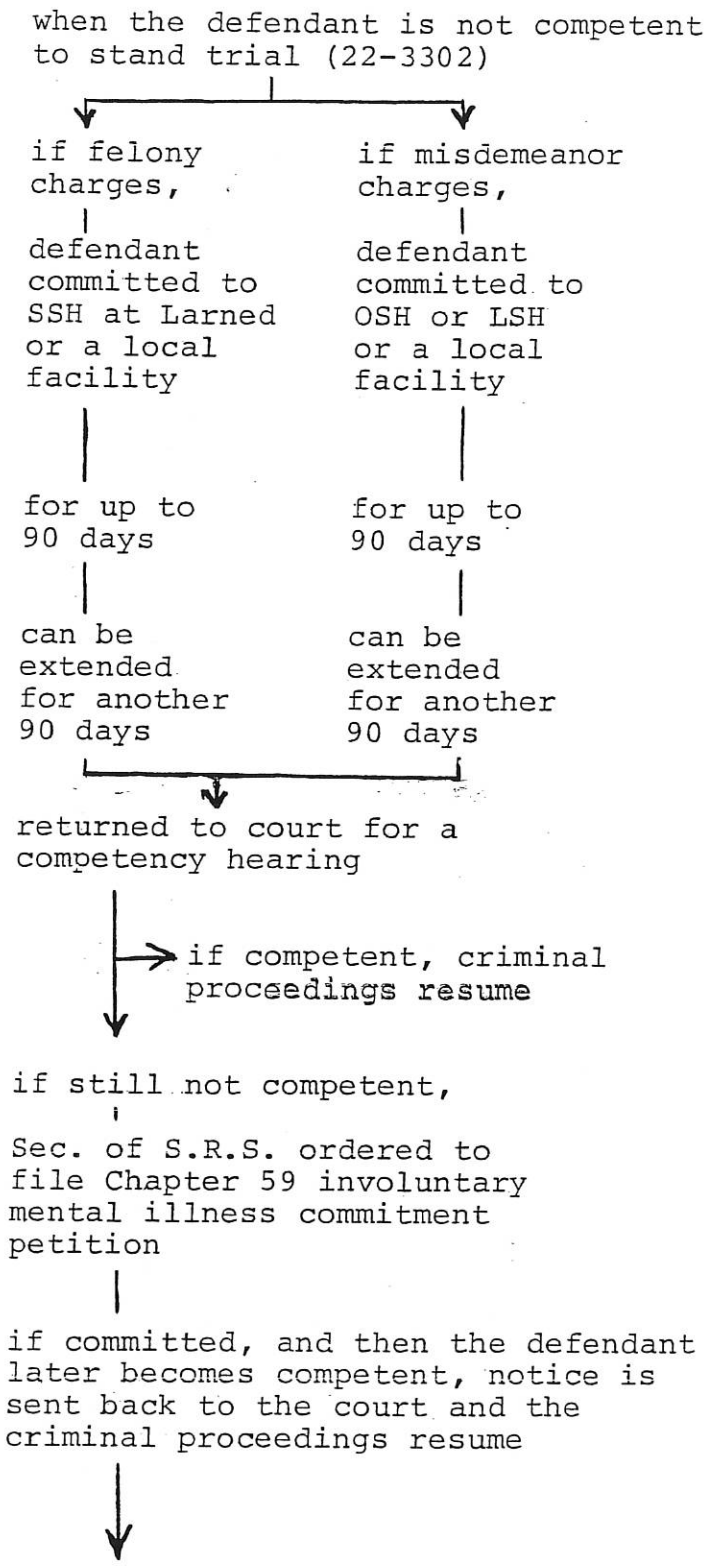
History: L. 1970, ch. 129, § 22-3302; L. 1971, ch. 114, § 6; L. 1976, ch. 163, § 17; L. 1977, ch. 121, § 1; L. 1982, ch. 148, § 1; L. 1984, ch. 128, § 1; L. 1986, ch. 115, § 64; L. 1986, ch. 299, § 2; L. 1986, ch. 133, § 2; L. 1992, ch. 309, § 1; July 1.



22-3303. Commitment of incompetent; limitation; civil commitment proceedings; regained competency; credit for time committed. (1) A defendant who is charged with a felony and is found to be incompetent to stand trial shall be committed for evaluation and treatment to the state security hospital or any appropriate county or private institution. A defendant who is charged with a misdemeanor and is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state, county or private institution. Any such commitment shall be for a period of not to exceed 90 days. Within 90 days after the defendant's commitment to such institution, the chief medical officer of such institution shall certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate state, county or private institution until the defendant attains competency to stand trial or for a period of six months from the date of the original commitment, whichever occurs first. If such probability does not exist, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto.

(2) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto.

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



(4) A defendant committed to a public institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all or any part of the time during which the defendant was committed and confined in such public institution.

History: L. 1970, ch. 129, § 22-3303; L. 1977, ch. 121, § 2; L. 1992, ch. 309, § 2; July 1.

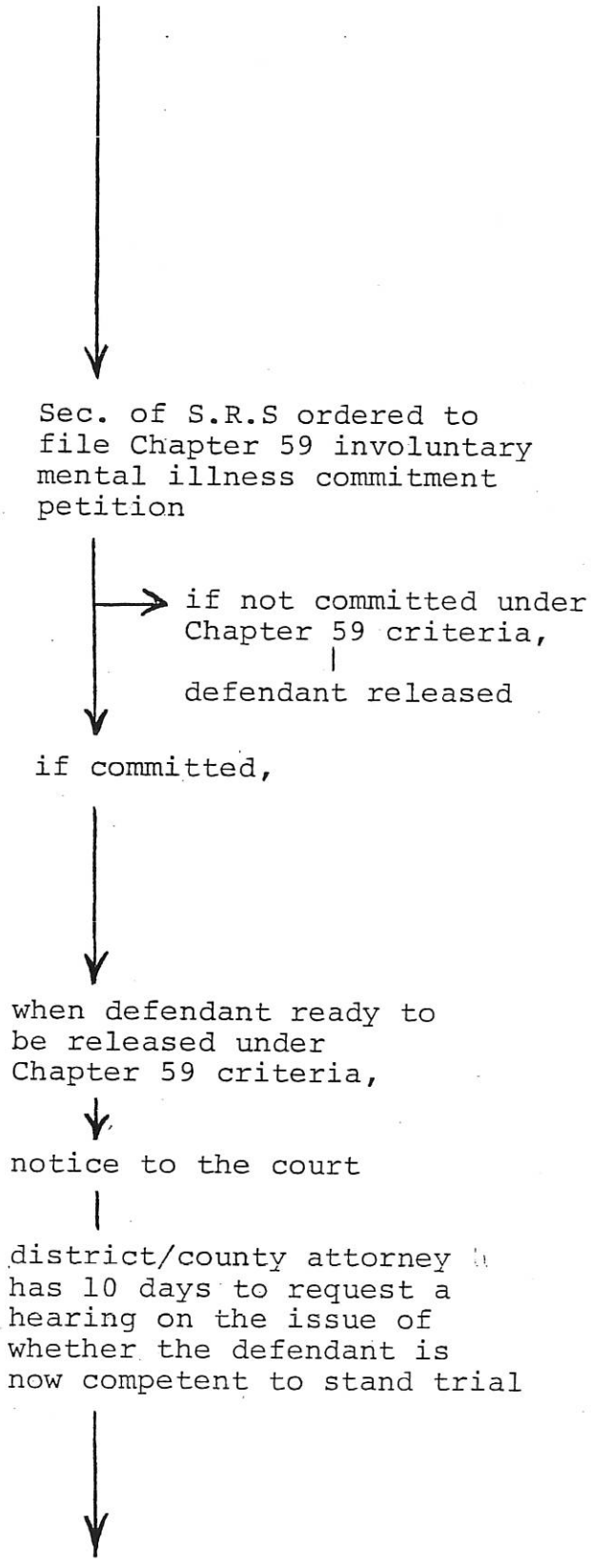
22-3304.

History: L. 1970, ch. 129, § 22-3304; Repealed, L. 1977, ch. 121, § 4; April 14.

22-3305. Procedure when defendant not civilly committed or to be discharged; order of discharge; request for hearing on competency; charges dismissed; statute of limitations not to run. (1) Whenever involuntary commitment proceedings have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 22-3303 and amendments thereto, and the defendant is not committed to a treatment facility as a patient, the defendant shall remain in the institution where committed pursuant to K.S.A. 22-3303 and amendments thereto, and the secretary shall promptly notify the court and the county or district attorney of the county in which the criminal proceedings are pending of the result of the involuntary commitment proceeding.

(2) Whenever involuntary commitment proceedings have been commenced by the secretary of social and rehabilitation services as required by K.S.A. 22-3303 and amendments thereto, and the defendant is committed to a treatment facility as a patient but thereafter is to be discharged pursuant to the care and treatment act for mentally ill persons, the defendant shall remain in the institution where committed pursuant to K.S.A. 22-3303 and amendments thereto, and the head of the treatment facility shall promptly notify the court and the county or district attorney of the county in which the criminal proceedings are pending that the defendant is to be discharged.

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



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

History: L. 1977, ch. 121, § 3; L. 1987, ch. 116, § 1; L. 1996, ch. 167, § 44; Apr. 18.

if no request for a hearing is made, or after a hearing it is determined that the defendant is still incompetent to stand trial

defendant released

CHAPTER 208

HOUSE BILL No. 2176

AN ACT concerning crimes, punishment and criminal procedure; amending K.S.A. 21-3701, 21-4614, 22-3303 and 38-1611 and K.S.A. 2000 Supp. 21-2511, 21-3106, 21-3520, 21-3764, 22-4902, 22-4904, 22-4905, 22-4906, 22-4907, 22-4908 and 22-4909 and repealing the existing sections.

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

Section 1. K.S.A. 2000 Supp. 21-3520 is hereby amended to read as follows: 21-3520. (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(1) The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution and the person with whom the offender is e gaging in consensual sexual intercourse, lewd fondling or touchir sodomy *is a person 16 years of age or older who* is an inmate; or

(2) the offender is a parole officer and the person with offender is engaging in consensual sexual intercourse, lew touching, or sodomy *is a person 16 years of age or older* who has been released on parole or conditional rel supervision under the direct supervision and contr

(3) the offender is a law enforcement offic or the employee of a contractor who is under in a jail and the person with whom the off sexual intercourse, lewd fondling or to years of age or older who is confine

(4) the offender is a law enf venile detention facility or sa tractor who is under contra tions house and the pe consensual sexual inte person 16 years of a facility or sanctio

(5) the off the emplov a juveni

Sec. 8. K.S.A. 22-3303 is hereby amended to read as follows: 22-3303. (1) A defendant who is charged with a felony and is found to be incompetent to stand trial shall be committed for evaluation and treatment to the state security hospital or any appropriate county or private institution. A defendant who is charged with a misdemeanor and is found to be incompetent to stand trial shall be committed for evaluation and treatment to any appropriate state, county or private institution. Any such commitment shall be for a period of not to exceed 90 days. Within 90 days after the defendant's commitment to such institution, the chief medical officer of such institution shall certify to the court whether the defendant has a substantial probability of attaining competency to stand trial in the foreseeable future. If such probability does exist, the court shall order the defendant to remain in an appropriate state, county or private institution until the defendant attains competency to stand trial or for a period of six months from the date of the original commitment, whichever occurs first. If such probability does not exist, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto. *When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 2000 Supp. 59-2946, and amendments thereto. The other provisions of subsection (f) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, shall not apply.*

(2) If a defendant who was found to have had a substantial probability of attaining competency to stand trial, as provided in subsection (1), has not attained competency to stand trial within six months from the date of the original commitment, the court shall order the secretary of social and rehabilitation services to commence involuntary commitment proceedings pursuant to article 29 of chapter 59 of the Kansas Statutes Annotated, and any amendments thereto. *When a defendant is charged with any off-grid felony, any nondrug severity level 1 through 3 felony, or a violation of K.S.A. 21-3504, 21-3511, 21-3518, 21-3603 or 21-3719, and amendments thereto, and commitment proceedings have commenced, for such proceeding, "mentally ill person subject to involuntary commitment for care and treatment" means a mentally ill person, as defined in subsection (e) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, who is likely to cause harm to self and others, as defined in subsection (f)(3) of K.S.A. 2000 Supp. 59-2946, and amendments thereto. The other pro-*

visions of subsection (f) of K.S.A. 2000 Supp. 59-2946, and amendments thereto, shall not apply.

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

(4) A defendant committed to a public institution under the provisions of this section who is thereafter sentenced for the crime charged at the time of commitment may be credited with all or any part of the time during which the defendant was committed and confined in such public institution.

New Sec. 9. The secretary of social and rehabilitation services shall convene a task force to study current programs and laws for alleged offenders with disabilities that render such offenders potentially incompetent to stand trial, but who do not meet the criteria for involuntary commitment under Kansas law. The task force shall review and make recommendations on the adequacy of Kansas programs and services, and current Kansas law, in protecting public safety and in providing services and support to such alleged offenders. The secretary shall report to the judiciary committee during the 2001 interim and shall make a final report including programmatic and statutory recommendations to the 2002 legislature.

Sec. 10. K.S.A. 2000 Supp. 22-4902 is hereby amended to read as follows: 22-4902. As used in this act, unless the context otherwise requires:

(a) "Offender" means: (1) A sex offender as defined in subsection (b);

(2) a violent offender as defined in subsection (d);

(3) *a sexually violent predator as defined in subsection (f);*

(4) any person who, on and after the effective da[illegible]

convicted of any of the following crimes when [illegible]

years of age:

(A) Kidnapping as def[illegible] and enforce the

thereto, except by [illegible] within which fingerprints

(B) a[illegible] pository when required by this section.

[illegible]section shall preclude the custodian of a juvenile

[illegible]g photographs or fingerprints of the juvenile to be used

[illegible]y action under the Kansas parentage act.

Sec. 18. K.S.A. 21-3701, 21-4614, 22-3303 and 38-1611 and K.S.A. 2000 Supp. 21-2511, 21-3106, 21-3520, 21-3764, 22-4902, 22-4904, 22-4905, 22-4906, 22-4907, 22-4908 and 22-4909 are hereby repealed.

Sec. 19. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 22, 2001.

FELONY CRIMES
SORTED BY SEVERITY LEVEL AND THEN BY STATUTE NUMBER

REFERENCE	DESCRIPTION	F/M	LEVEL
21-3401	Murder in the first degree	F	Offgrid
21-3801	Treason	F	Offgrid
21-3439	Capital Murder	F	Offgrid
21-3412(c)(3)	Domestic battery; third or subsequent w/in last 5 years	F	Nongrid
8-1567(f)	Driving under the influence of alcohol or drugs; third or subsequent conviction	F	Nongrid
21-3401	Murder in the first degree; Attempt (21-3301)	F	1
21-3402(a)	Intentional second degree murder	F	1
21-3421	Aggravated kidnapping	F	1
21-3801	Treason; Attempt (21-3301)	F	1
65-4142(e)(4)	Knowingly or intentially receiving/acquiring proceeds or engaging in transactions involving proceeds... > $500,000	F	1D
65-4159(b)	Drugs; Unlawfully manufacture controlled substance	F	1D
65-7006	Drugs; Possession of ephedrine, pseudoephedrine or phenylpropanolamine; precursor to illegal Substance, etc.	F	1D
65-4160(c)	Drugs; Opiates or narcotics; Possession: third and subsequent offense	F	1D
65-4161(c)	Drugs; Opiates or narcotics; Sale, poss. w/intent to sell, etc.; third and subsequent offense	F	1D
21-3502(a)(1)	Rape; sexual intercourse with a person who does not consent; overcome by force, fear, etc.	F	1
21-3502(a)(2)	Rape; sexual intercourse with a child < 14 yoa	F	1
65-4142(e)(3)	Knowingly or intentially receiving/acquiring proceeds or engaging in transactions involving proceeds... ≥ $100,000 < 500,000	F	2D
21-3401	Murder in the first degree; Conspiracy (21-3302)	F	2
21-3402(b)	Murder in the second degree (reckless)	F	2
21-3801	Treason; Conspiracy (21-3302)	F	2
HB2007*	Prohibited acts involving fetal organs and tissue	F	2
65-4160(b)	Drugs; Opiates or narcotics; Possession; second offense	F	2D
65-4161(d)	Drugs; Opiates or narcotics; Sale, poss. w/intent to sell, etc. 1st off. w/in 1,000' of school property	F	2D
65-4161(b)	Drugs; Opiates or narcotics; Sale, poss. w/intent to sell, etc.; second offense	F	2D
65-4163(b)	Drugs; Depressants, stimulants, hallucinogenics, etc.; Sale, possession w/intent to sell, etc. w/in 1,000' of a school	F	2D
21-3502(a)(3)	Rape; knowing misrepresentation that sexual intercourse medically/therapeutically necessary procedure	F	2
21-3502(a)(4)	Rape; knowing misrepresentation that sexual intercourse legally required procedure w/in scope of authority	F	2
21-3506(a)(1)	Aggravated criminal sodomy; sodomy with a child < 14 yoa	F	2
21-3506(a)(2)	Aggravated criminal sodomy; causing a child < 14 yoa to engage in sodomy with a person or animal	F	2
21-3506(a)(3)	Aggravated criminal sodomy; sodomy with person who does not consent; overcome by force, etc.	F	2
65-4159(b)(1)	Drugs; Unlawfully manufacture controlled substance; first offense	F	2D
65-4142(e)(2)	Knowingly or intentionally receiving or acquiring proceeds or engaging in transactions involving proceeds... ≥ $5,000 < $100,000	F	3D
21-3401	Murder in the first degree; Solicitation (21-3303)	F	3
21-3403	Voluntary manslaughter	F	3
21-3406(a)(1)	Assisting suicide (force or duress)	F	3
21-3420	Kidnapping	F	3
21-3427	Aggravated robbery	F	3
21-3801	Treason; Solicitation (21-3303)	F	3
21-4219(b)	Criminal discharge of a firearm at occupied dwelling or vehicle resulting in great bodily harm	F	3
65-4161(a)	Drugs; Opiates or narcotics; Sale, poss. w/intent to sell, etc.; first offense	F	3D
65-4163(a)	Drugs; Depressants, stimulants, hallucinogenics, etc.; Sale, possession w/intent to sell, etc.	F	3D
21-3415(b)(1)*	Aggravated battery on an LEO; Intentional, great bodily harm or w/motor vehicle	F	3
21-3504(a)(1)	Aggravated indecent liberties w/child; ≥ 14 yoa, but < 16 yoa; sexual intercourse	F	3
21-3504(a)(3)	Aggravated indecent liberties w/child; < 14 yoa; lewd fondling or touching	F	3
21-3505(a)(2)	Criminal sodomy; sodomy with a child ≥ 14 yoa, but < 16 yoa	F	3
21-3505(a)(3)	Criminal sodomy; causing child ≥ 14 yoa, but < 16 yoa to engage in sodomy with a person or animal	F	3
21-3719(b)(1)	Aggravated arson; substantial risk of bodily harm	F	3
65-4142(c)(1)	Knowingly or intentionally receiving or acquiring proceeds or engaging in transactions involving proceeds known to be derived from any violation of the uniform controlled substances act, < $5,000	F	4D
65-4152	Drugs; Poss. of paraphernalia w/intent to use for planting, growing, harvesting, manuf., etc. any controlled substance	F	4D
65-4153(a)(3)	Drugs; Sim controlled substances/paraphernalia; deliver to someone less than 18	F	4D
65-4153(a)(4)	Drugs; Sim controlled substances/paraphernalia	F	4D
21-3440	Injury to a pregnant woman in the commission of a felony	F	4
21-3442	Involuntary manslaughter in the commission of a DUI	F	4
65-4160(a)	Drugs; Opiates or narcotics; Possession; first offense	F	4D
65-4162(a)	Drugs; Depressants, stimulants, hallucinogenics, etc.; Possession; second and subs.	F	4D
65-4164(a)	Drugs; Substances in K.S.A. 65-4113; Sale, possession with intent to sell, deliver, etc.	F	4D
21-3414(a)(1)(A)	Aggravated battery - intentional, great bodily harm	F	4
21-3504(a)(2)	Aggravated indecent liberties w/child; ≥ 14 yoa, but < 16 yoa; lewd fondling or touching without consent	F	4
21-3419a(d)	Aggravated criminal threat; ≥ $25,000 loss of productivity	F	4
21-4220(b)(3)	Unlawful endangerment; setup, build device to protect controlled substance; serious physical injury	F	5
21-3419a(c)	Aggravated criminal threat; ≥ $500 but less than $25,000 loss of productivity	F	5

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FELONY CRIMES
SORTED BY SEVERITY LEVEL AND THEN BY STATUTE NUMBER

REFERENCE	DESCRIPTION	F/M	LEVEL	P/N
21-3440	Injury to a pregnant woman in commission of K.S.A. 21-3412 (aggravated assault), K.S.A. 21-3413(a)(1), battery or KSA 21-3517, sexual battery	F	5	P
21-3404	Involuntary manslaughter	F	5	P
21-3426	Robbery	F	5	P
21-3518	Aggravated sexual battery; intentional touching, without consent, who is ≥16 yoa; force, fear, etc.	F	5	P
21-3604a	Aggravated abandonment of a child	F	5	P
21-3609	Abuse of a child; involves child < 18 yoa; intentional torture, cruelly beating, etc.	F	5	P
21-3716	Aggravated burglary	F	5	P
21-4219(b)	Criminal discharge of a firearm at occupied dwelling or vehicle resulting in bodily harm	F	5	P
21-3413(a)(2)	Battery against a correctional officer	F	5	P
21-3413(a)(3)	Battery against a juvenile correctional facility officer	F	5	P
21-3413(a)(4)	Battery against a juvenile detention facility officer	F	5	P
21-3413(a)(5)	Battery against a city/county correctional officer/employee	F	5	P
21-3414(a)(2)(A)	Aggravated battery - reckless, great bodily harm	F	5	P
21-3503(a)(1)	Indecent liberties w/child; child ≥14 yoa, but < 16 yoa; lewd fondling or touching	F	5	P
21-3503(a)(2)	Indecent liberties w/child; child ≥14 yoa, but < 16 yoa; soliciting to engage in lewd fondling, etc.	F	5	P
21-3516(a)(1)	Sexual exploitation of a child; employing, etc. child < 18 yoa to engage in sexually explicit conduct	F	5	P
21-3516(a)(2)	Sexual exploitation of a child; possessing visual medium of child < 18 yoa engaging in such conduct	F	5	P
21-3516(a)(3)	Sexual exploitation of a child; guardian permitting child < 18 yoa to engage in such conduct	F	5	P
21-3516(a)(4)	Sexual exploitation of a child; promoting performance of child < 18 yoa to engage in such conduct	F	5	P
21-3603(a)(2)(A)	Aggravated incest; Otherwise lawful sexual intercourse or sodomy with relative ≥16 yoa, but < 18 yoa	F	5	P
21-3810(a)(2), (7)	Aggravated escape from custody; escaping while held in lawful custody upon a felony, etc.	F	5	N
21-3810(b)(2), (7)	Aggravated escape from custody; escape is facilitated by the use of violence or threat of violence	F	5	P
21-3826(c)(1)	Traffic in contraband in a correctional institution; firearms, ammunition, explosives, controlled substance	F	5	N
21-3826(c)(2)	Traffic in contraband in a correctional institution by an employee of a correctional institution	F	5	N
44-5,125(a)(i)(4)	Worker's compensation fund fraud	F	5	N
21-3731(b)(2)	Criminal use of explosives intended to be used to commit a crime, a public safety officer is placed at risk to diffuse the explosive or if another human being is in the building where the explosives are used	F	6	P
	KSA 21-3414(a)(1)(B) and 21-3414(a)(1)(C))	F	6	P
17-1253	Securities; intentional unlawful offers, sale or purchase	F	6	N
21-3419a(b)	Aggravated criminal threat; < $500 loss of productivity	F	6	P
21-3411	Aggravated assault on law enforcement officer	F	6	P
21-3415(b)(2)	Aggravated battery on an LEO; bodily harm or physical contact; deadly weapon	F	6	P
21-3437	Mistreatment of a dependant adult - physical	F	6	P
21-3511(a)	Aggravated indecent solicitation of a child; < 14 yoa to commit or submit to unlawful sexual act	F	6	P
21-3511(b)	Aggravated indecent solicitation of a child; < 14 yoa, inviting, etc. to enter secluded place	F	6	P
21-3742(d)	Throwing objects from bridge or overpass; resulting in injury to a passenger of vehicle	F	6	P
21-3810(b)(1),(3-6)	Aggravated escape from custody; escape is facilitated by the use of violence or threat of violence	F	6	P
21-3826(d)	Traffic in contraband in a correctional institution	F	6	N
21-3829	Aggravated interference with conduct of public business	F	6	P
21-3833	Aggravated intimidation of a witness or victim	F	6	P
21-4215	Obtaining a prescription only drug by fraudulent means for resale	F	6	N
40-2,118	Insurance; Fraudulent acts in an amount of more than $25,000	F	6	N
65-3441(c)	Hazardous Wastes; Knowingly violates unlawful acts included in paragraphs 1-11, subsection (a)	F	6	N
21-3513(b)(3)	Prostitution; Promoting prostitution when prostitute is < 16 yoa	F	6	P
21-3718(b)(1)*	Arson; dwelling	F	6	P
21-3719(b)(2)	Aggravated arson; no substantial risk of bodily harm	F	6	P
44-5,125(a)(I)(iv)	Worker's compensation fund fraud ≥ $50,000 < $100,000	F	6	N
HB2596*	Counterfeiting; ≥$25,000; 1,000 or more items; or third or subsequent offense	F	7	N
21-4220(b)(2)	Unlawful endangerment; setup, build device, to protect controlled substance; physical injury	F	7	P
21-3846(b)(1)	Medicaid Fraud; false claim, statement or representation to madicaid progarm; ≥ $25,000	F	7	N
9-2012	Banking; Embezzlement; Intent to defraud	F	7	N
16-0305	Violation of prearranged funeral agreements act $25,000 or more	F	7	N
16-0633	Contract; Investment Certificates; Unlawful receipt of commission	F	7	N
16-0634	Contract; Investment Certificates; Unlawful receipt/possession of company property	F	7	N
16-0635	Contract; Investment Certificates; Unlawful acts pertaining to books/records	F	7	N
16-0640	Contract; Investment Certificates; Unlawful Acts or Omissions	F	7	N
16a-5-301(1)	Violation of the Uniform Consumer Credit Code; second or subsequent offense	F	7	N
17-1254	Securities; intentional unlawful sale by an unregistered dealer	F	7	N
17-1255	Securities; intentional unlawful sale of unregistered securities	F	7	N
17-1267	Securities; intentional violation of any rule and regulation adopted or order issued under the Securities Act	F	7	N
21-3410	Aggravated assault	F	7	P
21-3422a(b)	Aggravated interference with parental custody	F	7	P
21-3428	Blackmail	F	7	N
21-3435	Infection by communicable disease (HIV, etc.)	F	7	P
21-3445*	Unlawful administration of a substance	F	7	P
21-3715(a)	Burglary; building used as a dwelling	F	7	P
21-3715(b)	Burglary; building not used as a dwelling	F	7	N

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FELONY CRIMES
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REFERENCE	DESCRIPTION	F/M	LEVEL	P/N
21-3726	Aggravated tampering with a traffic signal	F	7	N
21-3742(c)	Throwing objects from bridge or overpass; resulting in injury to a pedestrian	F	7	P
21-3802	Sedition	F	7	N
21-3902(a)(6)(A)	Official Misconduct; Knowingly and willfully submitting to a governmental entity a claim for expenses which is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity; $25,000 or more	F	7	N
21-4018*	Identity Theft	F	7	P
21-4209a	Criminal possession of explosives	F	7	P
21-4219(b)	Criminal discharge of a firearm at occupied dwelling or vehicle	F	7	P
21-4401	Racketeering	F	7	N
25-2409	Elections; Election bribery	F	7	N
25-2417	Elections; Bribery of an election official	F	7	N
25-2418	Elections; Bribe acceptance by an election official	F	7	N
40-2,118	Insurance; Fraudulent acts in an amount of at least $5,000 but less than $25,000	F	7	N
50-1013	Willful violation of loan broker article	F	7	N
9-2004(b)(1)	Banking; Swear Falsely; Perjury in a felony trial	F	7	N
19-3519(b)(3)	Counties; Water Districts; fraudulent claims of $25,000 or more	F	7	N
21-3414(a)(1)(B)	Aggravated battery - intentional, bodily harm	F	7	P
21-3414(a)(1)(C)	Aggravated battery - intentional, physical contact	F	7	P
21-3510(a)(1)	Indecent solicitation of a child; ≥14 yoa & <16 yoa to commit or submit to unlawful sexual act	F	7	P
21-3510(a)(2)	Indecent solicitation of a child; ≥14 yoa & <16 yoa, inviting, etc. to enter secluded place	F	7	P
21-3513(b)(2)	Prostitution; Promoting prostitution when prostitute is ≥16 yoa, second or subsequent conviction	F	7	P
21-3603(a)(1)	Aggravated incest; Marriage to person <18 yoa, who is a known relative	F	7	P
21-3603(a)(2)(B)	Aggravated incest; Lewd fondling and touching described in 21-3503 with relative ≥16 yoa, but <18 yoa	F	7	P
21-3612(a)(5)	Contributing to a child's misconduct; causing, encouraging child <18 yoa to commit a felony	F	7	P
21-3701(b)(1)	Theft; loss of ≥ $25,000	F	7	N
21-3704(c)(1)	Theft of services; loss of ≥ $25,000	F	7	N
21-3707(d)(1)	Giving a worthless check; loss of ≥ $25,000	F	7	N
21-3718(b)(2)*	Arson; nondwelling	F	7	N
21-3720(b)(1)	Criminal damage to property; damage of property ≥ $25,000	F	7	N
21-3729(d)(1)	Criminal use of a financial card; money, services, etc. w/in 7 day period ≥ $25,000	F	7	N
21-3734(b)(1)	Impairing a security interest; value of ≥ $25,000	F	7	N
21-3755(c)(3)	Computer crime; loss of ≥ $25,000	F	7	N
21-3805(b)(1)	Perjury; false statement is made upon the trial of a felony charge	F	7	N
21-3904(b)(1)	Presenting a false claim; ≥ $25,000	F	7	N
21-3905(b)(1)	Permitting a false claim; ≥ $25,000	F	7	N
21-4111(b)(1)(A)	Criminal desecration; subsections (a)(2)(B), (a)(2)(C) or (a)(2)(D); loss of ≥ $25,000	F	7	N
39-0717(b)(3)	Welfare fraud; in the amount of $25,000 or more	F	7	N
40-0247(b)(1)(A)	Insurance agent/broker failure to pay premium to company; loss of ≥$25,000	F	7	N
44-5,125(a)(I)(iii)	Worker's compensation fund fraud; ≥ $25,000 < $50,000	F	7	N
50-718*	Knowingly and willfully obtaining information on a consumer from a consumer reporting agency under false pretenses	F	7	P
50-719*	Knowingly and willfully providing information concerning an individual to a person not authorized to receive that information; officer or employee of a consumer reporting agency	F	7	P
9-2002	Banking; Making false reports of statements;	F	8	N
21-4220(b)(1)	Unlawful endangerment: setup, build device, to protect controlled substance	F	8	N
21-3522(a)(1)	Unlawful Voluntary Sexual Relations; sexual intercourse	F	8	P
21-3438(c)*	Stalking when the offender has a previous conviction within 7 years for stalking the same victim	F	8	P
21-3604	Abandonment of child; involves child <16 yoa	F	8	P
21-3711	Making a false writing	F	8	N
21-3807(b)	Compounding a felony crime	F	8	N
21-3810(a)(1),(3-6)	Aggravated escape from custody; escaping while held in lawful custody upon a felony, etc.	F	8	N
21-3811	Aiding an escape	F	8	N
21-3812(b)	Aiding a person charged as a felon	F	8	N
21-3812(a)	Aiding a felon	F	8	N
21-3840	Aircraft; Failure to register an aircraft	F	8	N
21-3841	Aircraft; Fraudulent aircraft registration	F	8	N
21-3842	Aircraft; Fraudulent acts relating to aircraft identification numbers	F	8	N
21-3910	Misuse of public funds	F	8	N
21-4105	Incitement to riot	F	8	P
21-4204(a)(2)	Criminal possession of firearm; poss. of any firearm by adult or juvenile offender convicted or adjudicated of a person felony or a violation of any provision of the uniform controlled substances act and was found to have been in possession of a firearm at the time of the commission of the offense	F	8	N
21-4204(a)(3)	Criminal possession of firearm; poss. of any firearm by a person convicted or juvenile offender adjudicated of a felony w/in 5 yrs and was found not to have been in possession of a firearm at the time of the commission of the offense	F	8	N
21-4204(a)(4)(A)	Criminal possession of firearm; poss. of any firearm by a person convicted or juvenile offender adjudicated of a listed felony w/in 10 yrs and was found not to have been in possession of a firearm at the time of			

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REFERENCE	DESCRIPTION	F/M	LEVEL	P/N
	the commission of the offense	F	8	N
21-4204(a)(4)(B)	Criminal possession of firearm; poss. of any firearm by a person convicted or juvenile offender adjudicated of a nonperson felony w/in 10 yrs and was found not to hve been in possession of a firearm at the time of the commission of the offense	F	8	N
21-4219(a)	Criminal discharge of a firearm at unoccupied dwelling	F	8	P
21-4304	Commercial gambling	F	8	N
21-4306	Dealing in gambling devices	F	8	N
21-4308	Installing communications facilities for gamblers	F	8	N
21-4405	Commercial bribery	F	8	N
25-2412	Elections; Election forgery	F	8	N
25-2423	Elections: Election tampering	F	8	N
40-2,118	Insurance; Fraudulent acts in an amount of at least $1,000 but less than $5,000	F	8	N
65-2859	Healing Arts: Filing false documents	F	8	N
65-4141	Drugs; Arranging sale/purchase using communication facility	F	8	N
74-8717	Lottery; Forgery of lottery ticket	F	8	N
74-8810(j)	Parimutuel Racing; Prohibited Acts (i)(1) through (i)(15)	F	8	N
21-3414(a)(2)(B)	Aggravated battery - reckless, bodily harm	F	8	P
21-3612(a)(4)	Contributing to a child's misconduct; sheltering or concealing a runaway child	F	8	P
21-3731(b)(1)	Criminal use of explosives	F	8	P
21-3902(a)(5)	Official Misconduct; knowingly destroying, tampering with or concealing evidence of a crime	F	8	N
21-4202(b)(2)	Aggravated weapons violation; violation of 21-4201(a)(6), (a)(7), or (a)(8) criminal use of a firearm by a felon	F	8	N
21-4301a(c)(2)	Promoting obscenity to minors; second or subsequent offense	F	8	P
44-5,125(b)	Worker's Compensation Fund fraud, knowingly presenting false certificate of insurance	F	8	N
HB2596*	Counterfeiting; ≥ $500 to < $25,000; 100 to 1,000 items; or second offense	F	9	N
HB2805§1*	Theft detection shielding device or device remover; unlawful manufacture/sell	F	9	N
21-3522(a)(2)	Unlawful Voluntary Sexual Relations; sodomy	F	9	P
55-162(e)	Oil & Gas; removal of seal without approval of KCC	F	9	N
8-0262(a)	Driving while suspended-third or subsequent conviction	F	9	N
8-0287	Driving while a habitual violator	F	9	N
8-1568(c)(3)	Fleeing or eluding a police officer Third or subsequent conviction	F	9	P
8-1568(c)(4)	Fleeing or eluding a police officer	F	9	P
16-0305	Violation of prearranged funeral agreements act at least $500 but < $25,000	F	9	N
21-3406(a)(2)	Assisting suicide	F	9	P
21-3419	Criminal threat	F	9	P
21-3438(b)*	Stalking when the victim has a temporary restraining order or injunction against the offender	F	9	P
21-3508(b)(2)	Lewd and lascivious behavior (presence of person under 16)	F	9	P
21-3610b	Furnishing alcoholic beverages to a minor for illicit purposes; child < 18 yoa	F	9	P
21-3611(a)	Aggravated juvenile delinquency; adjudicated child ≥ 16 yoa running away, escaping from SRS facility	F	9	N
21-3707(d)(4)	Giving a worthless check; loss of < $500, if in previous five yrs. offender convicted two or more times of the same crime	F	9	N
21-3712	Destroying a written instrument	F	9	N
21-3713	Altering a legislative document	F	9	N
21-3715(c)	Burglary; motor vehicle, aircraft, or other means of conveyance	F	9	N
21-3748	Piracy of recordings	F	9	N
21-3756	Adding dockage or foreign material to grain	F	9	N
21-3757	Odometers; unlawful acts	F	9	N
21-3762	Pyramid promotional scheme; establishing, operating, advertising or promoting	F	9	N
21-3815	Attempting to influence a judicial officer	F	9	N
21-3817	Corrupt conduct of a juror	F	9	N
21-3825	Aggravated false impersonation	F	9	N
21-3846(b)(2)	Medicaid Fraud; false claim, statement or representation to medicaid program; ≥ $500 < $25,000	F	9	N
21-3846(b)(4)	Medicaid Fraud; offering wholly/partially false record, document, data or instrument in connection w/audit or investigation involving medicaid claim for payment	F	9	N
21-3849	Medicaid Fraud; destruction or concealment of records	F	9	N
21-3902(a)(6)(B)	Official Misconduct; knowingly and willfully submitting to a governmental entity a claim for expenses which is false or duplicates expenses for which a claim is submitted to such governmental entity, another governmental or private entity; at least $500 but less than $25,000	F	9	N
21-4202(b)(1)	Aggravated weapons violation; violation of 21-4201(a)(1) through (a)(5) or (a)(9) criminal use of a firearm by a felon	F	9	N
21-4406	Sports bribery	F	9	N
21-4408	Tampering with a sports contest	F	9	N
25-2411	Elections; Election perjury	F	9	N
25-2414	Elections; Possessing false or forged election supplies	F	9	N
25-2428	Elections; Destruction of election supplies	F	9	N
25-2429	Elections; Destruction of election papers	F	9	N
25-2431	Elections; False impersonation of a voter	F	9	N
40-2,118	Insurance; Fraudulent acts in an amount of at least $500 but less than $1,000	F	9	N
59-2121(a)	Adoption; knowingly/intentionally receiving/accepting excessive fees	F	9	N

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REFERENCE	DESCRIPTION	F/M	LEVEL	P/N
65-2861	Healing Arts; False swearing	F	9	N
65-4153(c)	Drugs; Sim controlled substances/paraphernalia; Deliver, or cause to be delivered, to child <18 yoa	F	9	N
65-4155(d)	Drugs; Representing noncontrolled substance as controlled; causing delivery to child <18 yoa, etc.	F	9	N
8-1568(b)(3)	Fleeing or eluding a law enforcement officer - third or subsequent conviction	F	9	P
9-2004(b)(1)	Banking; Swear Falsely; Perjury other than in a felony trial	F	9	N
19-3519(b)(2)	Counties; Water Districts; fraudulent claims of at least $500, but less than $25,000	F	9	N
21-3701(b)(2)	Theft; loss of ≥ $500, but < $25,000	F	9	N
21-3701(b)(4)	Theft; loss of < $500, if in previous five yrs. offender has been convicted two or more times of the same crime	F	9	N
21-3704(c)(2)	Theft of services; loss of ≥ $500 but < $25,000	F	9	N
21-3707(d)(2)	Giving a worthless check; loss of ≥ $500 but < $25,000	F	9	N
21-3720(b)(2)	Criminal damage to property; damage of property ≥ $500 but < $25,000	F	9	N
21-3729(d)(2)	Criminal use of a financial card; money, services, etc. w/in 7 day period ≥ $500, but < $25,000	F	9	N
21-3734(b)(2)	Impairing a security interest; value of ≥ $500, but < $25,000	F	9	N
21-3749(b)(2)	Dealing in pirated recordings; ≥7 audio-visual recordings or ≥100 sound recordings w/in 180 days	F	9	N
21-3750(b)(2)	Nondisclosure of source of recordings; ≥7 audio-visual or ≥100 sound recordings w/in 180 days	F	9	N
21-3755(c)(2)	Computer crime; loss of ≥ $500, but < $25,000	F	9	N
21-3805(b)(2)	Perjury; false statement made in a cause, matter or proceeding other than the trial of a felony charge	F	9	N
21-3808(b)(1)	Obstructing legal process or official duty in the case of a felony, or resulting from parole, etc.	F	9	N
21-3904(b)(2)	Presenting a false claim; ≥ $500 but < $25,000	F	9	N
21-3905(b)(2)	Permitting a false claim; ≥ $500 but < $25,000	F	9	N
21-4111(b)(1)(B)	Criminal desecration; subsections (a)(2)(B), (a)(2)(C) or (a)(2)(D); loss of ≥ $500, but < $25,000	F	9	N
21-4201(a)(6)	Criminal use of weapons; possessing any device, etc., used to silence the report of any firearm	F	9	N
21-4201(a)(7)	Criminal use of weapons; possessing, etc., shotgun w/barrel less than 18"; automatic weapons	F	9	N
21-4201(a)(8)	Criminal use of weapons; possessing, etc., cartridge w/plastic coated bullet that has core of <60% lead	F	9	N
21-4214(b)(2)	Obtaining a prescription only drug by fraudulent means; second or subsequent offense	F	9	N
21-4301(f)(2)	Promoting obscenity; second or subsequent offense	F	9	P
39-0717(b)(2)	Welfare fraud; in the amount of at least $500 but less than $25,000	F	9	N
40-0247(b)(1)(B)	Insurance agent/broker failure to pay premium to company; loss of ≥$500, but <$25,000	F	9	N
40-0247(b)(2)	Insurance agent/broker failure to pay premium to company; loss of <$500, previous conv. w/in 5 yr	F	9	N
44-5.125(a)(1)(ii)	Worker's Compensation fund fraud > $500 < $25,000	F	9	N
44-5.125(c)	Worker's Compensation Fund fraud, health care provider knowingly submitting false bill for health care services	F	9	N
44-5.125(d)	Worker's Compensation Fund fraud, knowingly or intentionally conspiring to defraud the Workers CompensationFund	F	9	N
74-8718(b)(2)	Lottery; Unlawful sale of lottery ticket; second or subsequent offense	F	9	N
74-8719(b)(2)	Lottery; Unlawful purchase of lottery ticket; second or subsequent offense	F	9	N
65-4153(a)(1)	Drugs; Sim controlled substances/paraphernalia	F	9	N
65-4153(a)(2)	Drugs; Sim controlled substances/paraphernalia; deliver to someone less than 18	F	9	N
65-4153(a)(3)	Drugs; Sim controlled substances/paraphernalia;	F	9	N
21-3522(a)(3)	Unlawful Voluntary Sexual Relations; lewd fondling or touching	F	10	P
55-156	Oil & Gas; Protection of water prior to abandoning well	F	10	N
55-157	Oil & Gas; Cementing in of surface casing	F	10	N
8-0116(c)	Vehicle identification numbers; destroying, altering, removing, etc. vehicle ID	F	10	N
8-0116(a)	Vehicle identification numbers; sale of vehicle w/ ID destroyed, removed, etc.	F	10	N
9-2010	Banking; Insolvent Bank Receiving Deposits	F	10	N
17-1264	Securities; intentional filing of false or misleading statements	F	10	N
17-1264	Securities; Filing false or misleading statements	F	10	N
17-5412	Savings & Loans; Declaration of Dividends	F	10	N
17-5811	Savings & Loans; Accepting Payment When Capital Impaired	F	10	N
17-5812	Savings & Loans; Fraudulent Acts	F	10	N
21-3438(a)*	Stalking in all other cases	F	10	P
21-3520	Unlawful sexual relations	F	10	P
21-3605	Nonsupport of a child or spouse	F	10	N
21-3736	Warehouse receipt fraud	F	10	N
21-3814	Aggravated failure to appear	F	10	N
21-3830	Dealing in false identification documents	F	10	N
21-3838	Unlawful disclosure of authorized interception of wire	F	10	N
21-4209	Criminal disposal of explosives	F	10	P
21-4315(b)	Unlawful conduct of dog fighting	F	10	N
22-4903	Failure to register under the Kansas Offender Registration Act	F	10	N
25-2420	Elections; Election fraud by an election officer	F	10	N
25-2421	Elections; Election suppression	F	10	N
25-2422	Elections; Unauthorized voting disclosure	F	10	N
25-2425	Elections; Voting machine fraud	F	10	N
25-2426	Elections; Printing and circulating imitation ballots	F	10	N
25-4414	Electronic/electromechanical voting system fraud	F	10	N
25-4612	Optical scanning equipment fraud	F	10	N
32-1005(b)	Fish & Game; Commercialization of wildlife having an aggregate value of at least $500	F	10	N
34-0293	Grain Storage; Unlawful issuance of receipt for warehouseman's grain	F	10	N

Legend
F = Felony
M = Misdemeanor

P = Scored as person
N = Scored as nonperson
S = Scored as select
NS = Not scored

* This crime was created, amended or the severity level of this crime was changed during the 2000 legislative session.

Felony Crimes
Sorted by Severity Level and Then by Statute Number

Reference	Description	F/M	Level	P/N
34-0295	Grain Storage; Negotiation of receipt for encumbered grain with intent to defraud	F	10	N
41-0405	Liquor; Warehouses; False Reports & Unlawful Removals	F	10	N
44-0619	Labor Act, Violations	F	10	N
47-0421	Animals; Unlawful Branding or Defacing of Brands	F	10	N
50-0122	Trade; Bucket Shops	F	10	N
50-0123	Trade; Transactions Declared to be Gambling & Criminal	F	10	N
50-0124	Trade; Transmitting Messages for Pretended Purchases or Sale	F	10	N
50-0125	Trade; Unlawful Acts	F	10	N
55-904(d)(2)	Oil & Gas; Disposal of salt water; second and subsequent	F	10	N
58-3304	Property; Sale of Unregistered Sub-Divided Land	F	10	N
58-3315	Property; Uniform Land Sales Practices Act	F	10	N
65-3026(b)	Knowingly violating subsections (a) through (f) of KSA 65-3025, the Air Quality Control Act	F	10	N
65-3441(b)	Hazardous Wastes; Violation of unlawful acts included in paragraph 11, subsection (a)	F	10	N
66-0137	Utilities; Falsifying or Destroying Accounts/Records	F	10	N
75-4228	State Departments; Liability of Treasurer & Director of A&R	F	10	N
79-3228e	Taxation; Income Tax, Penalties & Interest	F	10	N
79-3834b	Taxation; Cereal Malt Beverages; Penalties	F	10	N
79-5208	Taxation; Drugs; Dealer possession without tax stamps	F	10	N
21-3422(c)(2)	Interference with parental custody in all other cases	F	10	P

Legend
F = Felony
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P = Scored as person
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NS = Not scored

* This crime was created, amended or the severity level of this crime was changed during the 2000 legislative session.

CARE AND TREATMENT ACT FOR MENTALLY ILL PERSONS

59-2946. Definitions. When used in the care and treatment act for mentally ill persons:

(e) "Mentally ill person" means any person who is suffering from a mental disorder which is manifested by a clinically significant behavioral or psychological syndrome or pattern and associated with either a painful symptom or an impairment in one or more important areas of functioning, and involving substantial behavioral, psychological or biological dysfunction, to the extent that the person is in need of treatment.

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

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

(3) "Likely to cause harm to self or others" means that the person, by reason of the person's mental disorder: (a) Is likely, in the reasonably foreseeable future, to cause substantial physical injury or physical abuse to self or others or substantial damage to another's property, as evidenced by behavior threatening, attempting or causing such injury, abuse or damage; except that if the harm threatened, attempted or caused is only harm to the property of another, the harm must be of such a value and extent that the state's interest in protecting the property from such harm outweighs the person's interest in personal liberty; or (b) is substantially unable, except for reason of indigency, to provide for any of the person's basic needs, such as food, clothing, shelter, health or safety, causing a substantial deterioration of the person's ability to function on the person's own.

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

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and

Chapter 208, Section 8

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

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59-2949. Voluntary admission to treatment facility; application; written information to be given voluntary patient. (a) A mentally ill person may be admitted to a treatment facility as a voluntary patient when there are available accommodations and the head of the treatment facility determines such person is in need of treatment therein, and that the person has the capacity to consent to treatment . . .

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

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

(2) the legal rights of a voluntary patient receiving treatment from a treatment facility as provided for in K.S.A. 1998 Supp. 59-2978 and amendments thereto; and

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

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

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

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Voluntary

Involuntary

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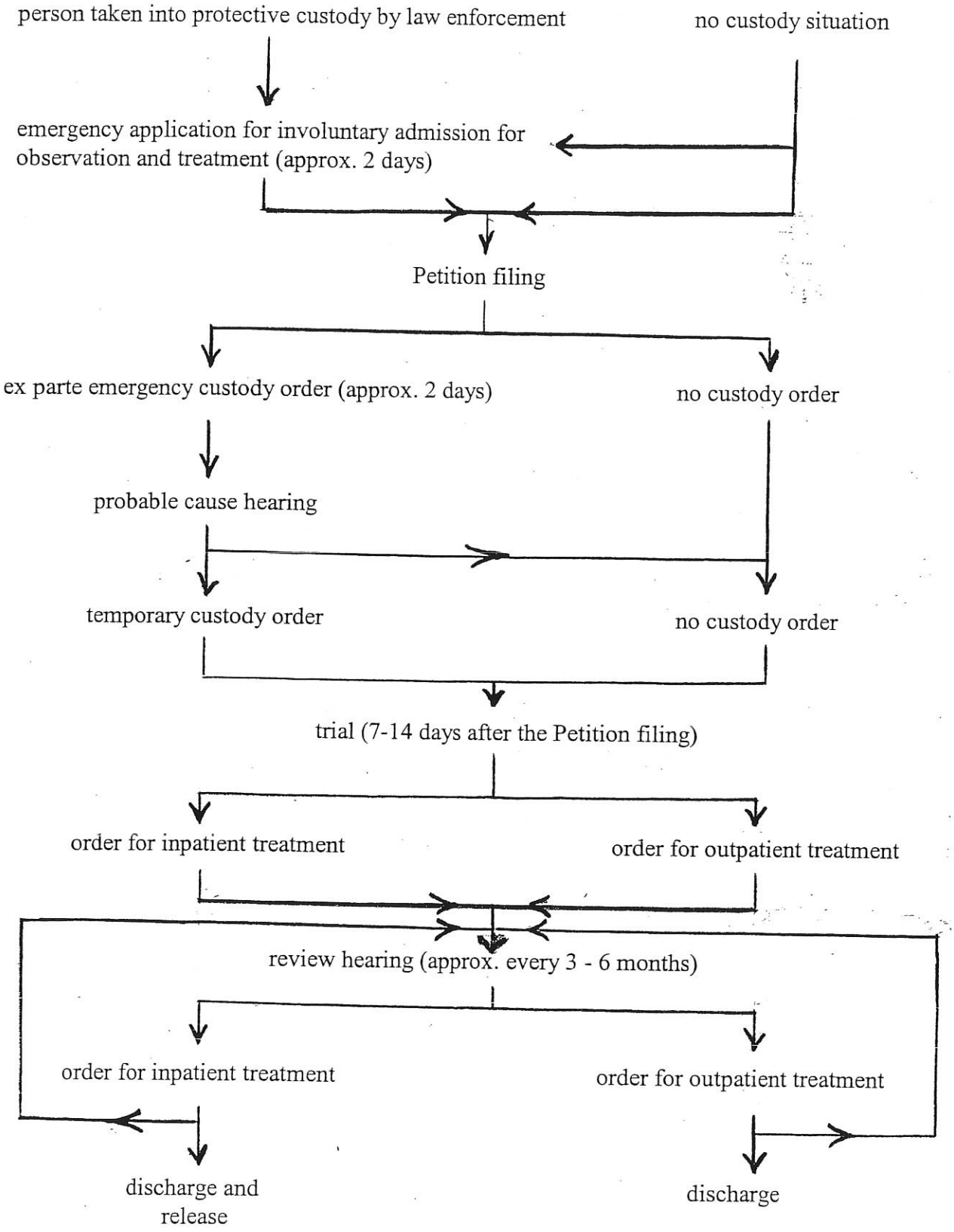
Involuntary Mental Illness Commitment Proceedings



The Shifting Sands Upon Which the Mental Health Services System Rests:

1. the criminalization of "mental illness":

*** the transfer of the mentally ill to prisons (as they slip thru the cracks)**

*** the calling of criminal behavior "mental illness" (of one form or another)**

2. differing expectations concerning the outcome of services:

*** among members of the community and public officials:**

- "error free" results

- services supportive of the community's social values

vs.

*** among consumers and their advocates:**

- "recovery model" results

- services supportive of personal values

3. diversification of the population served:

*** cultural context**

*** "criminalization"**

4. the erosion of resources:

*** actual Federal and State inflation adjusted appropriations have gone flat**

*** reduced insurance coverage (in spite of parity)**

*** reliance upon medicaid & public assistance programs as the primary funding system for mental health services (because of the state "match" feature)**

- IMD exclusion

- "supplemental" nature of public assistance

- lack of low cost housing

5. loss of prioritization within the State budget (due to deinstitutionalization):

*** percentage of SGF dollars, compared to the "big three," has gone way down, resulting in a loss of visibility**

6. life after 9-11-01:

*** security considerations**

*** trauma to the community**

No. 74,976

STATE OF KANSAS, *Appellee*, v. LANCE CHARLES CELLIER, *Appellant*.

(948 P.2d 616)

SYLLABUS BY THE COURT

1. TRIAL—*Erroneous Admission of Evidence—Contemporaneous Objection Rule.* A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless there appears of record objection to the evidence timely interposed and so stated as to make clear the specific ground of objection.
2. CRIMINAL LAW—*Motion to Suppress—Preservation of Issue on Appeal.* When a motion to suppress is denied, the moving party must object to the evidence at trial to preserve the issue on appeal.
3. APPEAL AND ERROR—*Statutes—Constitutionality—Appellate Review.* When a statute is challenged as unconstitutional, this court's standard of review is de novo.
4. CRIMINAL LAW—*Defendant's Competency to Stand Trial—Preponderance of Evidence Standard.* A party who raises the issue of competence to stand trial has the burden of going forward with the evidence, which will be measured by the preponderance of the evidence standard.
5. SAME—*Defendant's Competency to Stand Trial—Procedure When Court Raises Issue of Defendant's Competency.* When the court itself raises the issue of the competency of the accused, the court is not a party and cannot be responsible for coming forward with the evidence, but it can assign that burden to the State because both the court and the State have a duty to provide due process and to provide a fair trial to an accused.
6. SAME—*Defendant's Competency to Stand Trial—Presumption of Competency.* There is a presumption that a defendant is competent to stand trial.
7. SAME—*Sufficiency of Evidence—Appellate Review.* When the sufficiency of the evidence is challenged, the standard of review is whether, after review of all the evidence, viewed in the light most favorable to the prosecution, the appellate court is convinced that a rational factfinder could have found the defendant guilty beyond a reasonable doubt.

Appeal from Lyon district court; JOHN O. SANDERSON, judge. Opinion filed October 31, 1997. Affirmed.

Jean K. Gilles Phillips, special appellate defender, argued the cause, and *Jessica R. Kunen*, chief appellate defender, was with her on the brief for appellant.

Joe E. Lee, county attorney, argued the cause, and *Carla J. Stovall*, attorney general, was with him on the brief for appellee.

alleged improper waiver of *Miranda* rights, this issue has not been properly preserved for appeal.

III. COMPETENCY TO STAND TRIAL

On June 3, 1994, Cellier filed a motion challenging his competency to stand trial, in accordance with K.S.A. 22-3302. Pursuant to this motion, Cellier was committed to Larned State Security Hospital. On October 12, 1994, the trial court held a hearing on the issue of Cellier's competency. At that hearing, two employees of Larned State Security Hospital testified. Harold Dixon is a registered master's level psychologist employed at Larned State Security Hospital since 1981. Dixon was the ward psychologist and treatment team leader for Cellier. Dixon gave Cellier numerous tests and utilized this information to help form his opinion regarding Cellier's competency to stand trial, *i.e.*, whether Cellier understood the courtroom proceedings against him and whether Cellier could help his attorney in preparing a legal defense. According to Dixon, Cellier suffered from schizophrenia, although it was in remission during Cellier's stay at the hospital. Dixon opined that as long as Cellier remained on medication and in a structured environment, his psychosis could be controlled. Dixon also stated that Cellier was impulsive, unreliable, irresponsible, exercised poor judgment, and could not concentrate. However, Dixon explained that he did not think that Cellier's impulsiveness, irresponsibility, or unreliability was relevant to his ability to help with his defense. Dixon concluded that Cellier was competent to stand trial.

Dr. Arsenio Imperial, a Larned psychiatrist, testified that he interviewed Cellier in order to evaluate his competency to stand trial. Imperial found that Cellier's memory for immediate recall, comprehension, and attention were impaired. Cellier told Imperial that he had spoken with his attorney about the defense of insanity. However, Cellier told Imperial that he did not feel he was criminally insane, but it was his attorney's idea to suggest it.

Imperial testified that a person who is delusional could still assist his or her counsel in creating a defense to a criminal prosecution if the individual was properly medicated and the delusions were well encapsulated. Imperial opined that Cellier's delusions were

encapsulated and controlled by medication to a point where he could appropriately assist his counsel with mounting a defense. Imperial gave his professional opinion that Cellier was competent to stand trial. Imperial stated that he had not observed anything during the court proceedings regarding Cellier's competency to suggest that Cellier was incompetent. Further, Imperial stated that if Cellier continued to take his medication as prescribed, there was no reason to believe he would not remain competent to stand trial.

Based on the testimony of Dixon and Imperial, the trial court ruled that Cellier was competent to stand trial. Cellier appeals this ruling.

The procedure and statutory requirements for determining competency to stand trial, etc., are contained in K.S.A. 22-3301 and K.S.A. 22-3302.

A. Evidentiary Standard and Burden of Proof

Cellier's complaint is that these statutes do not include an evidentiary standard of proof which the trial court should use to determine whether the definition of incompetency has been met. As such, Cellier contends that there is no standard of proof by which to judge when the evidence is sufficient to find a person incompetent and no method to review a trial court's determination on appeal. Thus, Cellier challenges the competency statute as unconstitutional for failing to set out a standard of proof by which competency must be measured.

When a statute is challenged as unconstitutional, this court's standard of review is de novo. See *State v. Fierro*, 257 Kan. 639, 643, 895 P.2d 186 (1995).

In support of its position that K.S.A. 22-3302 is unconstitutional for failing to provide an evidentiary standard and burden of proof, Cellier points to two United States Supreme Court cases which addressed the constitutionality of competency statutes based on their evidentiary standards. *Cooper v. Oklahoma*, 517 U.S. 348, 134 L. Ed. 2d 498, 116 S. Ct. 1373 (1996); *Medina v. California*, 505 U.S. 437, 120 L. Ed. 2d 353, 112 S. Ct. 2572, *reh. denied* 505 U.S. 1244 (1992).

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In *Cooper*, the United States Supreme Court addressed an Oklahoma statute which presumed an accused was competant to stand trial unless the accused could prove his or her incompetency by clear and convincing evidence. The Supreme Court noted the well-accepted rule that " 'the criminal trial of an incompetent defendant violates due process.' " 517 U.S. at 354 (quoting *Medina*, 505 U.S. at 453). The Supreme Court then pointed out that with the Oklahoma statute, a criminal defendant could prove he or she was more likely than not incompetent (preponderance of the evidence standard), but if the defendant could not prove he or she was incompetent by clear and convincing evidence, then the defendant would still have to stand trial. Thus, the Court held that requiring the accused to meet such a high evidentiary standard of clear and convincing evidence, as opposed to a preponderance of the evidence standard, violated the accused's right to due process under the 14th Amendment. The Court struck down the Oklahoma competency statute as unconstitutional. 517 U.S. at 356, 369.

In *Medina*, the United States Supreme Court addressed a California statute which presumed an accused was competent to stand trial unless the accused could prove his or her incompetence by a preponderance of the evidence. The Court found that this statute, with its presumption of competence and preponderance of the evidence standard, did not violate due process. The Court upheld the statute as constitutional. 505 U.S. at 451-52.

Since an existing evidentiary standard in a competency statute can be too high and make the statute unconstitutional, Cellier asserts that the complete absence of an evidentiary standard in a competency statute should also make the statute unconstitutional. However, Cellier concedes that a court may salvage a statute when possible by interpreting ambiguous language in a constitutional manner.

Many states explicitly place the burden to prove incompetency on the defendant by a preponderance of the evidence. Several states place no burden on the defendant at all, but require the State to prove the defendant's competency once the issue has been credibly raised by the defendant. In a number of states, the burden

imposed on the defendant and/or the State to prove incompetency is unclear, as in Kansas. However, as the United States Supreme Court points out, "[n]othing in the competency statutes or case law of these States suggests . . . that the defendant bears the burden of proving incompetence by clear and convincing evidence." 134 L. Ed. 2d at 510 n. 17. Finally, the American Bar Association places the burden of proving incompetency on the party raising the issue, and the trial court must find the defendant is competent to stand trial "by the greater weight of the evidence." 2 ABA Standards for Criminal Justice § 7-4.8, p. 7-208 (2d ed. 1980).

The trial court obviously used an evidentiary standard to determine if Cellier could understand the proceedings or could assist in his defense. Neither K.S.A. 22-3301 nor 22-3302 explicitly provides such a standard. Thus, the trial court must have inferred an implicit evidentiary standard within the statutes from their language and the legislative intent. This has been done before and is not improper. For instance, K.S.A. 22-3215(4) provides the procedure for suppressing a confession. This statute specifically provides that the burden of proof for proving a confession is admissible is on the prosecution. However, the statute does not enunciate which evidentiary standard the prosecution must utilize to prove that a confession is admissible. This court did not find the statute was unconstitutional simply because it failed to enunciate a specific evidentiary standard for the State to use. Instead, this court inferred an evidentiary standard implicit within the statute—preponderance of the evidence. See *State v. Miles*, 233 Kan. 286, 295, 662 P.2d 1227 (1983). Thus, the trial court in this case can infer an evidentiary standard within the competency statute.

There are three different evidentiary standards which could be applied to K.S.A. 22-3301 and 22-3302—preponderance of the evidence, clear and convincing evidence, or beyond a reasonable doubt. The latter two of these three standards have been found to violate due process when included in a competency statute. See *Cooper*, 517 U.S. 348. The legislature would not intend to promulgate an unconstitutional statute. If at all possible, statutes are to be interpreted in a constitutional manner. The only way to constitutionally interpret 22-3301 and 22-3302 is to find that their implicit evidentiary standard is a preponderance of the evidence standard.

The issue of competency to stand trial is more complicated than it appears, the reason being that the issue is frequently raised by the court itself as opposed to being raised by or on behalf of the accused or by the State. The obvious rule is that a party who raises the issue of competence to stand trial has the burden of going forward with the evidence, which will be measured by the preponderance of the evidence standard. When the court itself raises the competency issue, the court is not a party and cannot be responsible for coming forward with the evidence, but it can assign that burden to the State because both the court and the State have a duty to provide due process and to provide a fair trial to an accused. Determining the competency of an accused to stand trial is a duty that falls on both the State and the trial court. The trial court measures the evidence presented by the standard of preponderance of evidence. With a statutory presumption that an accused is sane, *State v. Gilder*, 223 Kan. 220, 227-28, 574 P.2d 196 (1977), it follows that there is a presumption a defendant is competent to stand trial. Using this implicit burden of proof and evidentiary standard within the competency statutes, we hold that K.S.A. 22-3201 and K.S.A. 22-3202 are not unconstitutional.

B. Cellier's Competency to Stand Trial

Using the proper burden of proof and evidentiary standard, the trial court held a competency hearing and found that Cellier was competent to stand trial. Cellier appeals this finding.

A defendant is incompetent if the defendant cannot understand the court proceedings or assist counsel with a defense. K.S.A. 22-3301. According to Cellier, to be able to assist counsel, a defendant should have the ability to communicate rationally, to recall and relate facts concerning his actions, to comprehend advice, and to make decisions based on a well-explained alternative. See 2 ABA Standards for Criminal Justice § 7-4.1, Commentary, p. 7-173 (2d ed. 1980). Since Cellier does not have these abilities, he claims that he was incompetent to stand trial.

The only evidence presented at the competency hearing was the testimony of Drs. Dixon and Imperial, both of whom evaluated Cellier while he was a patient at the Larned State Security Hospital. Both Drs. Dixon and Imperial opined that Cellier could assist in his own defense. Both experts were medically trained to draw such conclusions. The trial court relied heavily on the testimony of these medical experts. The trial court also viewed Cellier in person at the competency hearing. From this evidence, the trial court ruled that Cellier was competent to stand trial. We find no error in this determination. This issue fails.

IV. SUFFICIENCY OF THE EVIDENCE

At trial, Cellier relied solely on the defense of insanity. In Kansas, a defendant's insanity is determined by the *M'Naghten* test. Under the *M'Naghten* test, a defendant is considered insane and is not held criminally responsible for his or her acts (1) where the defendant does not know the nature and quality of the act, or, in the alternative, (2) where the defendant does not know right from wrong with respect to that act. *State v. Boan*, 235 Kan. 800, 809. 686 P.2d 160 (1984). The trial court instructed the jury on t
M'Naghten test for insanity. The jurors found that Cellier w
insane. Cellier claims that the evidence was insufficient f
to find beyond a reasonable doubt that he was sane
Payton's death or that he was guilty of premedi
aggravated kidnapping.

In support of his insufficiency of evi
contends that all of the evidence pres
he did not know the nature and c
his insanity.

Cellier acknowledges th
sane and that he unde
Cellier tries to dis
Cellier points
hours and
only
st

No. 79,424

In the Matter of ADA VANDERBLOMEN.

(956 P.2d 1320)

SYLLABUS BY THE COURT

MENTAL ILLNESS—*Care and Treatment Act for Mentally Ill Persons—Organic Mental Disorder—Involuntary Commitment Proceeding*. A provision in the Care and Treatment Act for Mentally Ill Persons, K.S.A. 1997 Supp. 59-2946(f)(1), which excludes persons suffering from certain disorders, including "organic mental disorder," from being subject to involuntary commitment is not unconstitutionally vague. Despite the American Psychiatric Association's abandonment of the term organic mental disorder in its Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994), the Kansas Legislature clearly intended to use the term as it has been previously and commonly used throughout the psychiatric community. In the context of an involuntary commitment proceeding, disorders that have traditionally been labelled organic in nature should continue to be regarded as falling within the definition of "organic mental disorder."

Appeal from Shawnee district court; FRANK J. YEOMAN, JR., judge. Opinion filed April 17, 1998. Affirmed.

Kenneth M. Carpenter, of Carpenter, Chartered, of Topeka, argued the cause and was on the brief for appellant Ada Vanderblomen.

No appearance by appellee.

The opinion of the court was delivered by

LARSON, J.: This appeal involves the constitutionality of a provision of the Care and Treatment Act for Mentally Ill Persons, K.S.A. 1997 Supp. 59-2945 *et seq.*, which prevents those persons suffering from certain disorders from being subject to involuntary commitment. The court-appointed guardian for Ada Vanderblomen appeals the trial court's determination that K.S.A. 1997 Supp. 59-2946(f)(1) is constitutional and Vanderblomen's ordered discharge from a mental hospital.

In 1977, Vanderblomen was involved in a motor vehicle accident and suffered a traumatic closed head injury. Partially paralyzed and unable to care for her basic needs, she had been placed in various nursing homes.

On March 8, 1995, Vanderblomen's guardian applied to the Shawnee County District Court for a determination that Vanderblomen was mentally ill. The application alleged that Vanderblo-

men had become unmanageable at her nursing home and had injured staff, destroyed property, and become a danger to herself and other residents.

Attached to the petition was the affidavit of Dr. Benintendi, who had examined Vanderblomen and reviewed her records. The affidavit noted a history of aggression and stated Vanderblomen did not respond to questioning and was aphasic. Dr. Benintendi's diagnosis stated: "Mental Dis. NOS due to head injury or other possible organic Dis." Under treatment expectations, Dr. Benintendi wrote: "Please check for organic basis to behavior disruptions. Also evaluate medications." Dr. Benintendi concluded: "I believe client to be a danger to herself and others, and incompetent to make her own treatment decisions due to her mental illness."

The court granted a petition for temporary protective custody and appointed an attorney to represent Vanderblomen in the proceedings. On March 10, 1995, after a hearing, the court ruled there were reasonable grounds to believe Vanderblomen was mentally ill and likely to injure herself or others if not detained. The court ordered her placed in protective custody at the Topeka State Hospital.

Shortly after her commitment, Dr. Jose Bulatao at Topeka State Hospital evaluated Vanderblomen and reported to the court that Vanderblomen had not shown any aggression since her transfer, but stated she had a severe mental illness diagnosed as organic mental disorder and had no capacity to make a rational decision regarding her needs for treatment.

After receiving the report, the court concluded Vanderblomen was a mentally ill person as defined by statute and ordered her continued hospitalization. Subsequent reports from staff psychiatrists at the hospital indicated that Vanderblomen's diagnosis was organic mental disorder, characterized by impaired cognitive functioning, poor impulse control, impaired memory, impaired judgment, and unpredictable and aggressive behaviors. The reports indicated she required continued nursing care and supervision on a daily basis and she had no capacity to make rational decisions regarding treatment. Continued hospitalization was recommended.

Upon each scheduled review, the court continued to order Vanderblomen's confinement at the hospital. The next review was scheduled for June 14, 1996. The summary of Vanderblomen's medical status submitted to the court on May 24, 1996, stated she met the diagnostic criteria of dementia due to multiple etiologies and also carried the additional diagnosis of encephalopathy with aphasia. Although noting that she had shown some improvement, the report emphasized that Vanderblomen continued to be a danger to herself and others and was unable to meet her basic needs.

On June 10, 1996, the court terminated Vanderblomen's commitment, finding she was "not a 'mentally ill person subject to involuntary commitment for care and treatment.'" The court noted that she suffered from conditions described as dementia and encephalopathy, which are both descriptive of an organic mental disorder. The court stated that the new law, as provided in K.S.A. 1997 Supp. 59-2946(f)(1) excludes those suffering from an organic mental disorder from being subject to involuntary commitment.

The guardian petitioned the court to vacate the order and requested an evidentiary hearing. He pointed out that organic mental disorder had been eliminated as a separate and distinct mental disorder in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (4th ed. 1994) (DSM-IV) and argued that the new law was unconstitutionally vague.

The court denied the petition to vacate. The guardian appealed, and the Court of Appeals remanded the case to the district court to allow the guardian to present evidence in an evidentiary hearing.

At the hearing, the guardian presented the testimony of psychiatrist Dr. Samuel Bradshaw regarding diagnoses in the DSM-IV. Dr. Bradshaw stated that many prior diagnoses have been recently found to have a brain-based etiology and the wording of the DSM-IV indicates it is "illusory to say one kind of disorder is brain based and not another since the major mental disorders are all brain based." Quoting from the DSM-IV, he said: "The term organic mental disorder is no longer used in DSM-IV because it incorrectly implies [that] nonorganic mental disorders do not have a biological basis." Dr. Bradshaw agreed that usage of the term organic mental

disorder is no longer a medically acceptable diagnosis. The court took judicial notice of the entire DSM-IV.

The guardian argued that the Kansas Legislature had placed guardians in the untenable position where they have no authority to hospitalize wards needing hospitalization if those wards happen to suffer from an organic mental disorder. Vanderblomen's appointed attorney stated he had been unable to consult with his client due to her condition and he did not object to any of the guardian's remarks.

The court held the legislature clearly intended to exclude persons suffering from an organic mental disorder from involuntary commitment and decided the commitment statute was constitutional. The court found that the legislature defines legal terminology and was not persuaded that a change in the American Psychiatric Association's definitions in the DSM-IV caused the statute to become vague.

The guardian timely appeals. The Court of Appeals granted a stay of the trial court's order, and we granted the guardian's request for transfer to this court pursuant to K.S.A. 20-3017.

The issue in this case involves statutory interpretation, which is a question of law over which we have unlimited review. *In re Tax Appeal of Boeing Co.*, 261 Kan. 508, Syl. ¶ 1, 930 P.2d 1366 (1997). We are duty bound to avoid a vague construction of a statute if reasonably possible, *In re Care & Treatment of Hay*, 263 Kan. 822, 833, 953 P.2d 666 (1998). We have also stated:

"A statute is presumed constitutional and all doubts must be resolved in favor of its validity. If there is any reasonable way to construe a statute as constitutionally valid, the court must do so. A statute must clearly violate the constitution before it may be struck down. This court not only has the authority, but also has the duty, to construe a statute in such a manner that it is constitutional if the same can be done within the apparent intent of the legislature in passing the statute." *Peden v. Kansas Dept. of Revenue*, 261 Kan. 239, Syl. ¶ 2, 930 P.2d 1 (1996), *cert. denied* 520 U.S. 1229 (1997).

The guardian challenges the constitutionality of K.S.A. 1997 Supp. 59-2946(f)(1), which reads, in relevant part, as follows:

"(f)(1) 'Mentally ill person subject to involuntary commitment for care and treatment' means a mentally ill person, as defined in subsection (e), who also lacks

capacity to make an informed decision concerning treatment, is likely to cause harm to self or others, and whose diagnosis is not solely one of the following mental disorders: Alcohol or chemical substance abuse; antisocial personality disorder; mental retardation; organic personality syndrome; or an organic mental disorder."

K.S.A. 1997 Supp. 59-2946(e) states:

" 'Mentally ill person' means any person who is suffering from a mental disorder which is manifested by a clinically significant behavioral or psychological syndrome or pattern and associated with either a painful symptom or an impairment in one or more important areas of functioning, and involving substantial behavioral, psychological or biological dysfunction, to the extent that the person is in need of treatment."

The Care and Treatment Act for Mentally Ill Persons was enacted in 1996, repealing the Treatment Act for Mentally Ill Persons, K.S.A. 59-2901 *et seq.*

The new statutes distinguish between a "mentally ill person" and a "mentally ill person subject to involuntary commitment for care and treatment." K.S.A. 1997 Supp. 59-2946(e) and (f). The predecessor statute to K.S.A. 1997 Supp. 59-2946(f), K.S.A. 59-2902(h), made no such distinction and defined a mentally ill person as follows:

"(h) 'Mentally ill person' means any person who:
(1) Is suffering from a severe mental disorder to the extent that such person is in need of treatment;
(2) lacks capacity to make an informed decision concerning treatment; and
(3) is likely to cause harm to self or others."

When construing a statute, courts should give words in common usage their natural and ordinary meaning. "Technical words and phrases, and other words and phrases that have acquired a peculiar and appropriate meaning in law, shall be construed according to their peculiar and appropriate meanings." *Galindo v. City of Coffeyville,* 256 Kan. 455, Syl. ¶ 5, 885 P.2d 1246 (1994) (citing K.S.A. 1993 Supp. 77-201 *Second*). In *Reed v. Kansas Racing Comm'n,* 253 Kan. 602, Syl. ¶ 5, 860 P.2d 684 (1993), we also stated: "A statute is not invalid for vagueness or uncertainty where it uses words with commonly understood meanings. The test for vagueness is a common-sense determination of fundamental fairness."

The guardian argues that K.S.A. 1997 Supp. 59-2946(f)(1) uses a specific psychiatric term of art, implicating the use of DSM-IV definitions, and that this terminology cannot be considered a word in common usage. As the DSM-IV has abandoned the use of the term "organic mental disorder," the guardian claims that the term no longer has any meaning, particularly as there was testimony that the major mental disorders are all brain based.

The DSM-IV itself, however, recognizes its own diagnostic limitations in stating:

"Moreover, although this manual provides a classification of mental disorders, it must be admitted that no definition adequately specifies precise boundaries for the concept of 'mental disorder.' The concept of mental disorder, like many other concepts in medicine and science, lacks a consistent operational definition that covers all situations. . . . [D]ifferent situations call for different definitions." DSM-IV, p. xxi.

We do not believe there is any reason to link the constitutionality of a statute to the changing tides of psychiatric thought as reflected in the most recent version of the DSM. Due to the purpose of the manual and the frequent revisions it undergoes, it would be foolhardy to allow its altered provisions to render otherwise valid and comprehensible legislation unconstitutional. This point was emphasized by the United States Supreme Court in *Jones v. United States*, 463 U.S. 354, 364-65 n. 13, 77 L. Ed. 2d 694, 103 S. Ct. 3043 (1983):

"We do not agree with the suggestion that Congress' power to legislate in this area depends on the research conducted by the psychiatric community. We have recognized repeatedly the 'uncertainty of diagnosis in this field and the tentativeness of professional judgment. The only certain thing that can be said about the present state of knowledge and therapy regarding mental disease is that science has not reached finality of judgment . . . .' [Citations omitted.] The lesson we have drawn is not that government may not act in the face of this uncertainty, but rather that courts should pay particular deference to reasonable legislative judgments."

Furthermore, it is not at all clear that the legislature failed to consider the DSM-IV when it enacted the wording of 59-2946 in 1996. The general comment to the revised act submitted to the legislature by the Care and Treatment Advisory Committee of the

Judicial Council explained the rationale for the changes suggested in 59-2946(f) as follows:

"(2) 'Mentally ill person,' found currently at 59-2902(h) is rewritten and is separate from the new term 'mentally ill person subject to involuntary commitment for care and treatment.' The changes require that there are certain mentally ill persons who should not be subject to involuntary proceedings to restrict their liberty.

"(3) 'Mentally ill person subject to involuntary commitment for care and treatment' has been added. The intent is to separate the criteria that must be met before a person who is suffering from a mental illness may be involuntarily forced to accept treatment. In the current definition of 'severe mental disorder,' found at 59-2902(o), conditions caused by the use of chemical substances and antisocial personality are excluded from the legal definition. The committee expanded upon that list by naming disorders defined in the *Diagnostic and Statistical Manual of Mental Disorders* (Fourth Edition) American Psychiatric Association (1994) ('DSM-IV') which are generally professionally recognized as unresponsive to psychiatric treatment."

Although the distinction between organic and nonorganic mental disorders may no longer be clinically supported because all mental disorders may have a brain-based component, the legislature has the right to make distinctions based upon the treatability of a condition. The trial court recognized such a distinction when it stated:

"The Legislature's action is entirely consistent with this Court's prior rulings concerning the difference between 'illness' and 'organic deterioration,' *i.e.*, absence of brain cells or death of part of the brain. The legislative action in question has done no more than codify the existing law. It has been plain that the purpose for confining people involuntarily for treatment was to apply 'treatment' (whatever that might be) to change the person's mental condition. It has been stated over and over again in testimony before this Court that an 'organic' condition is not one that can be changed. It is 'organic' because part of the 'organ' is missing—destroyed, etc. It is not repairable, replaceable, or subject to change for the better. This is in contrast to changes that can be effected in a person through counseling, medication, etc. in such things as depression, schizophrenia, and the like."

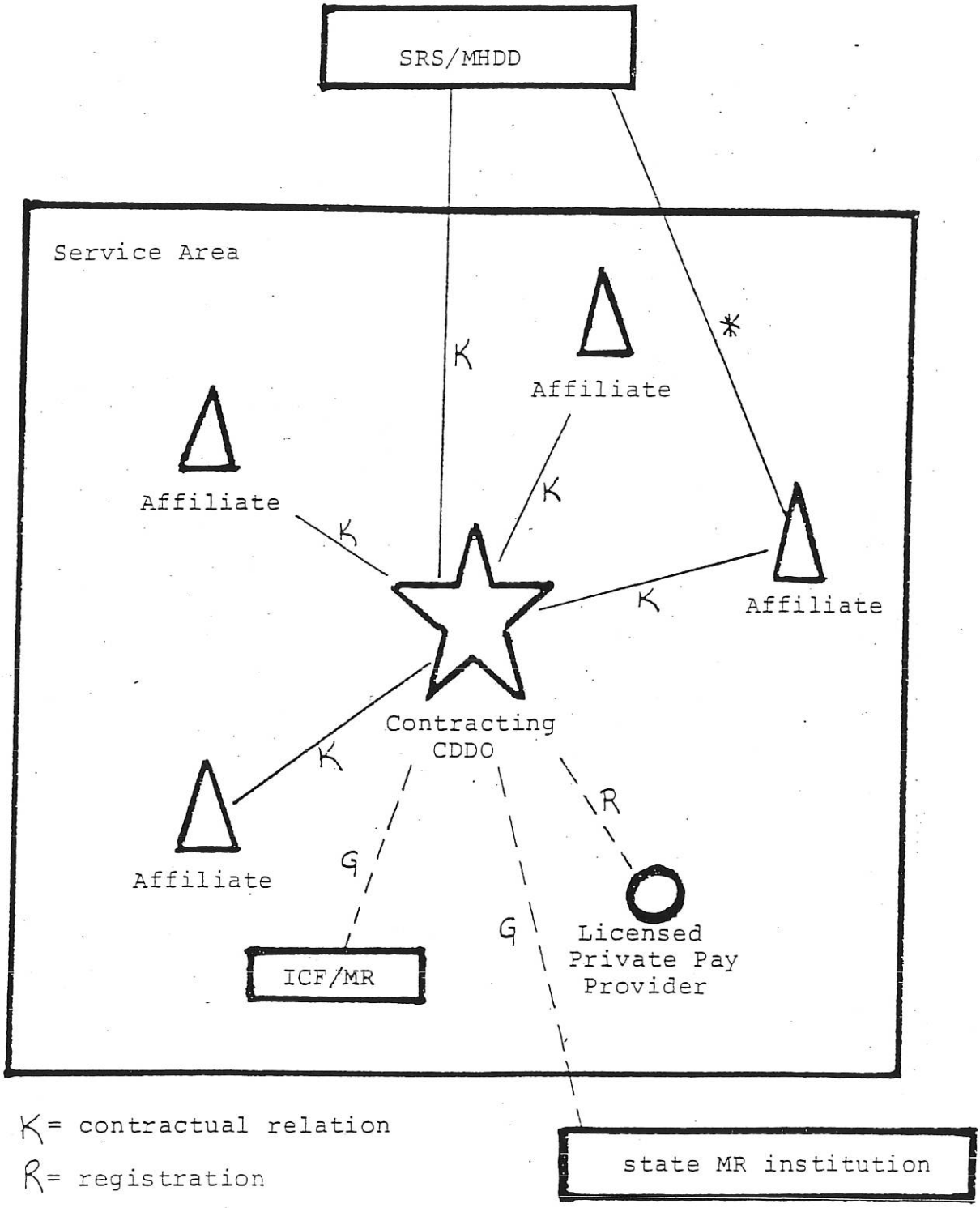
Based on the legislative history, the trial court's analysis appears to be correct. In his testimony before the Senate Judiciary Committee on January 18, 1996, Judge Sam Bruner, Chair of the Care and Treatment Advisory Committee of the Judicial Council, explained the bill would amend the existing definition of "mental

illness" by making a distinction between a "mentally ill person" and a "mentally ill person subject to involuntary commitment for care and treatment." Judge Bruner stated that certain mental conditions had been added that cannot be used for involuntary commitments. The minutes of the Committee specifically state:

"The conferee stated that certain mental conditions have been added that can not be used for involuntary commitments. The conferee continued by stating that **SB 469** is an expansion over current Kansas law to prohibit involuntary commitment for the treatment of mental illness, for instances with regard to mentally retarded individuals, or with regard to alzheimer victims, etc. The conferee noted that the language immediately preceding that change in the statute, line 29 states, 'whose diagnoses is not solely one of the following.' " Minutes of Senate Committee on Judiciary, January 19, 1996.

The diagnosis in issue here is "organic mental disorder," which the testimony of Judge Bruner clearly shows was to be one of those diagnoses which will not justify an involuntary commitment. Despite the DSM-IV's abandonment of the term "organic mental disorder," the legislature clearly intended to use the term as it has been previously and commonly used throughout the psychiatric community. In the context of an involuntary commitment proceeding, disorders that have traditionally been labelled organic in nature should continue to be regarded as falling within the definition of "organic mental disorder."

We hold K.S.A. 1997 Supp. 59-2946(f)(1) is not unconstitutionally void for vagueness. We affirm the trial court.



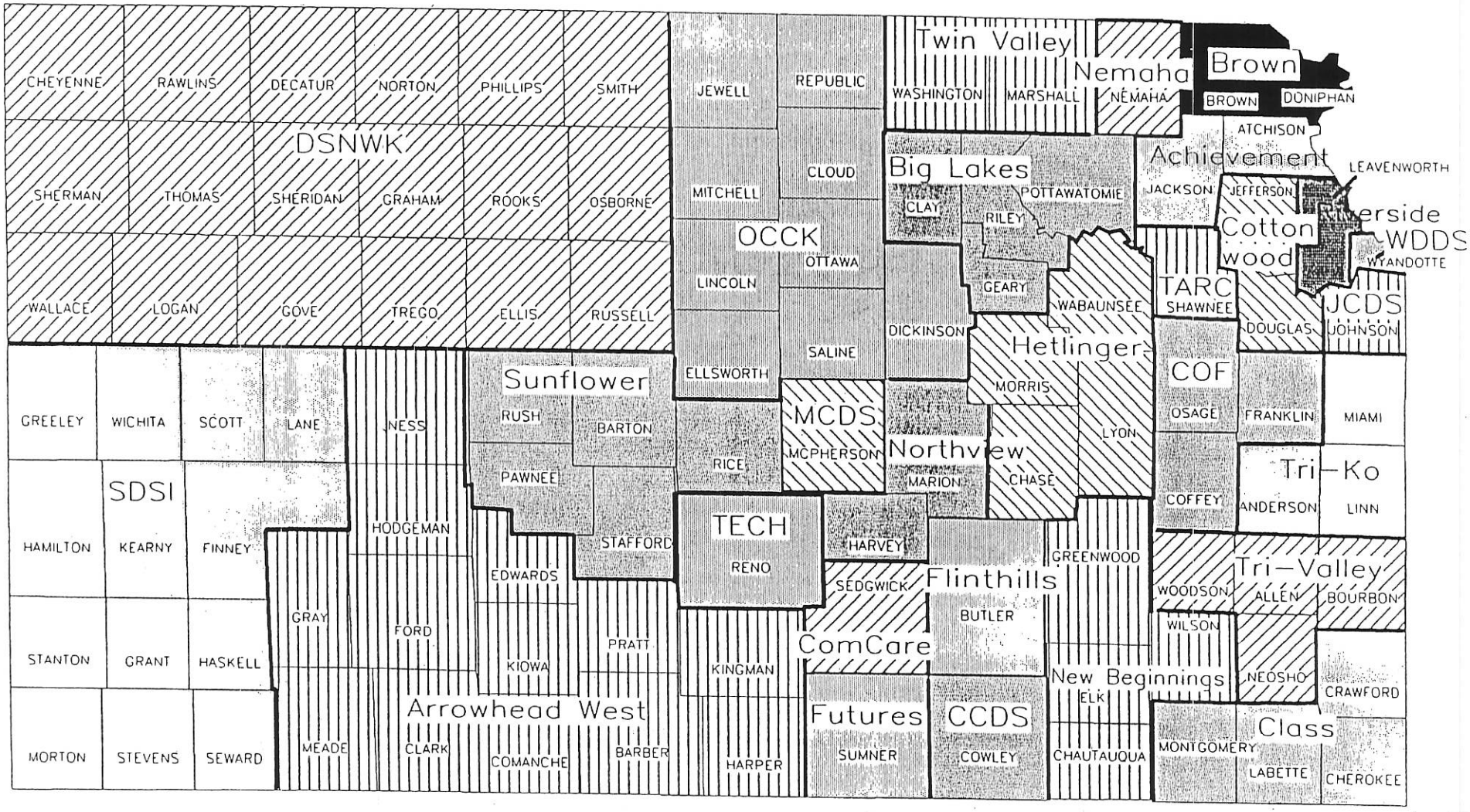
K= contractual relation

R= registration

G= gatekeeper function

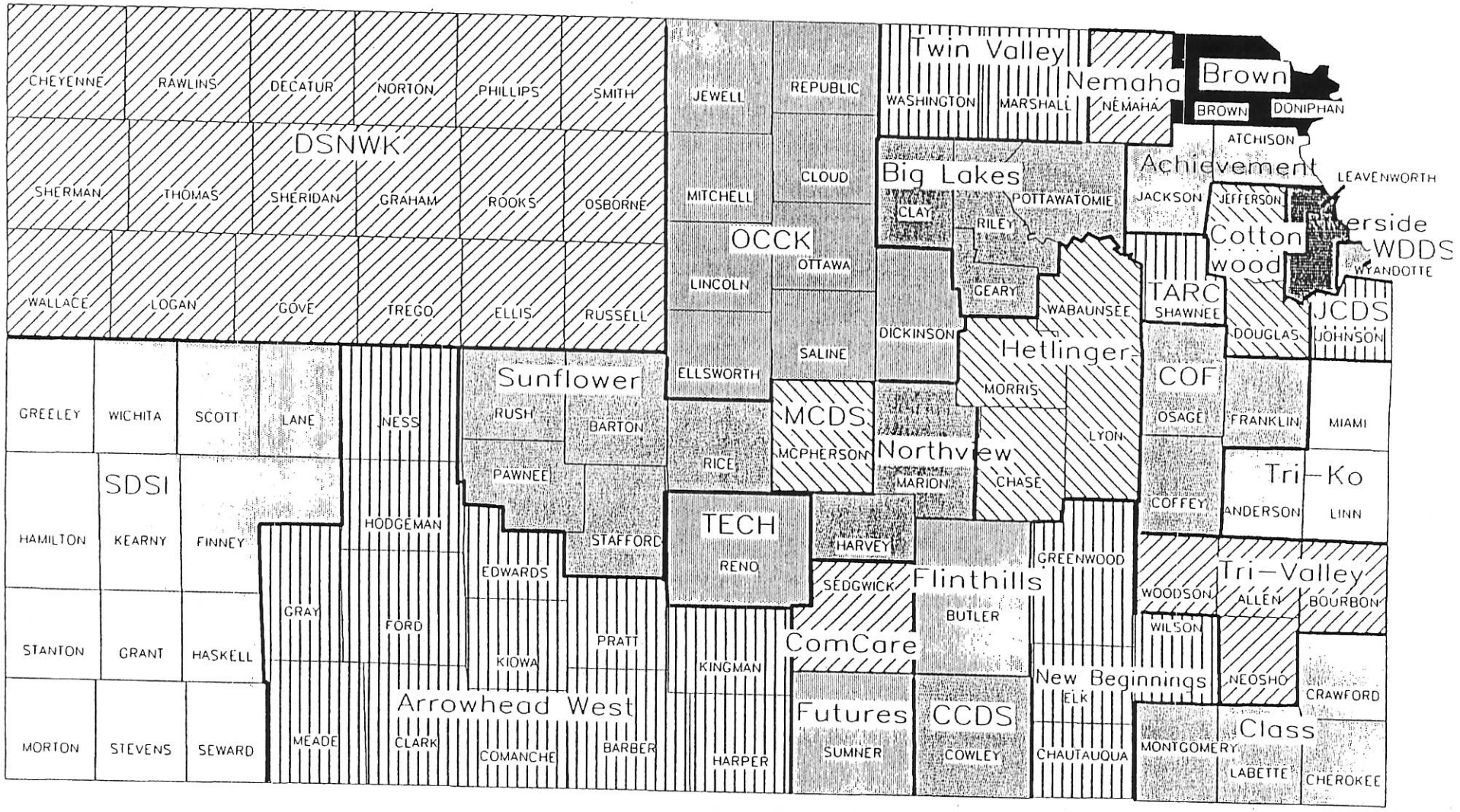
*= 20 or more employees
direct payment option

KANSAS CDDOs



Date of Map: November 25, 1997

KANSAS CDDOs



Date of Map: November 25, 1997

Rev. 12/03/01

KANSAS COMMUNITY DEVELOPMENTAL DISABILITY ORGANIZATIONS

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FAX: (913) 367-0370
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Dodge City, KS 67801
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FAX: (620) 227-8812
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FAX: (785) 742-3834
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FAX: (785) 242-2118
Dan L. Andrews, Director

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FAX: (316) 383-7866
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FAX: (785) 842-6102
Sharon Spratt, Director

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Developmental Svcs. of NW KS, Inc.
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El Dorado, KS 67042
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Dave Dunaway, Director

Training & Evaluation Ctr. of Hutchinson, Inc.
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Gordon Criswell, Director

30-64-23. Single point of application, determination, and referral. (a) Each contracting CDDO shall develop and implement a means by which the CDDO shall become the single point of application, eligibility determination, and referral for persons desiring to receive community services within the service area of that CDDO. Procedures shall be established for the following:

(1) Distributing, completing, accepting, and processing the uniform statewide application for community services, as published by the commission;

(2) determining if the applicant meets the definitional criteria to be considered a person with a developmental disability as defined in K.S.A. 39-1803, and amendments thereto;

(3) informing a person of the types and availability of community services provided within the service area and of the licensed providers and community service providers who have requested that their names be provided, existing within the service area and how the licensed providers may be contacted;

(4) assisting a person in deciding which community services the person may wish to obtain or would accept within the next year from the date of the person's application;

(5) assisting a person in accessing the community services of the person's choice; and

(6) maintaining a list of persons who have made application to the CDDO for community services and have been determined eligible, and allowing access to the names of those persons who have not requested that their names be kept confidential by the community service providers in the service area who have entered into affiliation agreements

with the CDDO.

(b) Each contracting CDDO shall require any employees or agents of the CDDO who perform the functions of eligibility determination to be trained as prescribed by the commissioner.

(c) Each contracting CDDO shall require any employees or agents of the CDDO who perform the functions of processing applications for service or referral of persons for service to complete a training program that meets these criteria:

(1) Is developed by the CDDO and approved by the CDDO council of community members;

(2) includes topics regarding the following:

(A) Types of community services available in the service area and information concerning the providers of those services; and

(B) potential referral contacts for persons who are determined not to be eligible for services; and

(3) is offered in a manner and frequency to ensure that employees or agents of the CDDO who perform the duties required by subsection (a) are competent.

(d) This regulation shall take effect on and after October 1, 1998. (Authorized by and implementing K.S.A. 1997 Supp. 39-1801, et seq.)

Definition of Mental Retardation

Background: Consistent with K.S.A. 39-1803(f) & (h), persons who are mentally retarded are those whose condition *presents an extreme variation in capabilities from the general population,* which manifests itself in the developmental years and results in a need for life long interdisciplinary services. The following identifies those who, among all persons with disabilities, *are the most disabled,* as defined below:

Mental Retardation means:

I. **substantial limitations in present functioning**

that

II. is manifested during the period from birth to age 18 years

and

III. is characterized by **significant sub-average intellectual functioning**

existing concurrently with

IV. deficits in adaptive behavior, including related limitations, in **two or more** of the following applicable adaptive skill areas:

1. Communication
2. Self-care
3. Home living
4. Social skills
5. Community use
6. Self-direction
7. Health and safety
8. Functional academics
9. Leisure
10. Work

Definition of Other Developmental Disability

Background: Consistent with K.S.A. 39-1803 (f), persons who are otherwise dvelopmentally disabled are those whose condition *presents an extreme variation from the general population,* which manifests itself in the developmental years and results in a need for life long interdisciplinary services. The following identifies those who, among all persons with disabilities, *are the most disabled,* as defined below:

Other Developmental Disability means:

I. a condition, such as autism, cerebral palsy, epilepsy, or other similar physical or mental impairment (or a condition which has received a dual diagnosis of mental retardation and mental illness), evidenced as a **severe, chronic disability** which is attributable to a mental or physical impairment or a combination of mental and physical impairments,

and

II. is manifested before the age of 22,

and

III. is likely to continue indefinitely,

and

IV. results in **substantial functional limitations** in any **three or more** of the following areas of life functioning:

1. Self-care
2. Understanding and the use of language
3. Learning and adapting
4. Mobility
5. Self-direction in setting goals and undertaking activities to accomplish those goals
6. Living independently
7. Economic self-sufficiency

and

V. reflects a need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services, which are lifelong or extended in duration, and are individually planned and coordinated

and

VI. does not include individuals who are solely severely emotionally disturbed or seriously and persistently mentally ill, or have disabilities solely as a result of infirmities of aging.

5-13

home and community based services for individuals with head injury

WHAT IS HCBS/HI

The HCBS/HI program serves individuals 16 to 55 years of age who meet the criteria for head injury rehabilitation hospital placement. The services available to these individuals are: 1) personal services; 2) assistive services; 3) transitional living skills; 4) rehabilitation therapies; and, 5) head injury (HI) targeted case management. The goal of the HCBS/HI program is to help individuals stay in their homes and live as independently as they can.

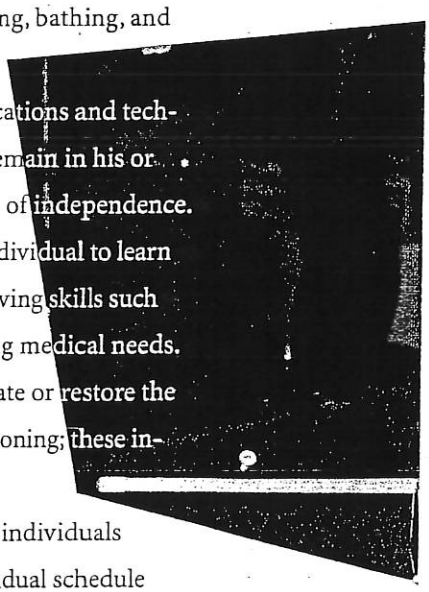
1. *Personal services:* Assistance in completing tasks of daily living which the individual would do themselves if they did not have a disability. These could include dressing, shopping, cooking, bathing, and other everyday tasks.

2. *Assistive services:* Medical equipment, home modifications and technology assistance devices which help the individual to remain in his or her home and increase his or her quality of life and level of independence.

3. *Transitional living services:* Services which help the individual to learn the skills necessary to be independent. Training in daily living skills such as cooking, bathing, grooming, social skills and managing medical needs.

4. *Rehabilitation therapies:* Services designed to rehabilitate or restore the individual to an optimal level of physical and mental functioning; these include physical, occupational, and speech therapies.

5. *HI targeted case management:* A case manager will help individuals determine their needs. The case manager will help the individual schedule the services and treatments necessary to meet their goals and needs.



who is eligible for hcbs/hi and how can they access the program

HOW DOES AN INDIVIDUAL QUALIFY FOR THE HCBS/HI PROGRAM

In order to qualify for the HCBS/HI program, you must meet the following eligibility guidelines:

1. Be 16 to 55 years of age;
2. Meet the criteria for head injury rehabilitation hospital placement (determined by screening);
3. Meet the financial guidelines to qualify for Title 19.

Contact your local Social and Rehabilitation Services (SRS) office, a head injury waiver provider (HIWP), or a Center for Independent Living (CIL), to find out about the HCBS/HI program. Ask how you can determine if you qualify for HCBS/HI services. A list of SRS offices, HIWP's, and CIL's are in the back of this booklet.

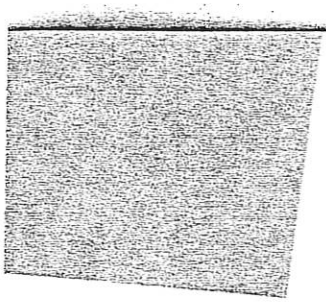
HOW CAN AN INDIVIDUAL WITH A HEAD INJURY APPLY FOR THIS PROGRAM

You can apply for these services through the local SRS office, a nearby CIL or the other HIWP agencies listed on the back of this booklet. You should call the number of the agency you choose to ask them for assistance in applying for HCBS/HI services.

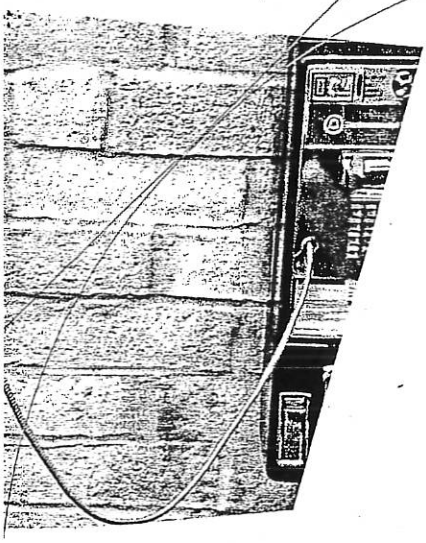
the rights, responsibilities, and duties of individuals with a head injury who take part in the hcbs/hi program

WHAT ARE THE RIGHTS AND RESPONSIBILITIES OF THE HCBS/HI CONSUMER

You have the right to appeal decisions. If you have any questions about an action taken by SRS, an HIWP, or a CIL, or if you want more information considered before a planned action is taken, discuss these matters with an SRS representative. If you are still not satisfied, you have the right to a hearing before a State Hearings Officer. Your request for a hearing must be received in writing within 30 days of the date on the notice of action to be taken. SRS will explain the hearing process and supply any forms you need if you request them. You may have legal counsel or other representation at the hearing. If your request for a fair hearing is received before the effective date of action, assistance may continue at the current level until a decision is made; however, any overpayment from a continuation may be recovered if the decision is not in your favor. If you are not satisfied with a fair hearing decision, you may request a review of the decision by the state appeals committee.



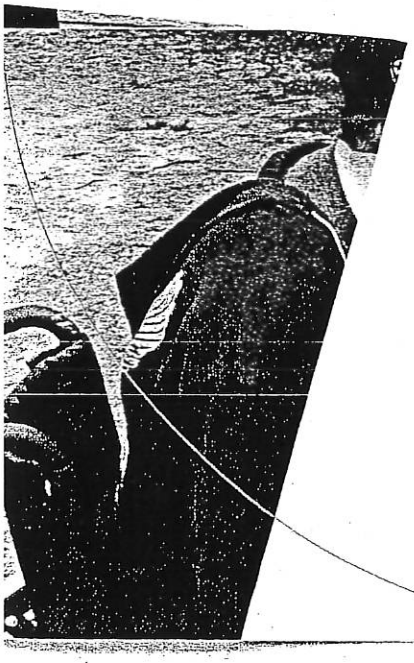
WHAT ARE THE CIVIL RIGHTS OF THE CONSUMER



No person shall, on grounds of race, color, national origin, age, disability, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity of the Kansas Department of Social and Rehabilitation Services. If a consumer feels that he or she has been discriminated against on the above grounds, a complaint may be made in writing to the Kansas Department of Social and Rehabilitation Services or to the federal Department of Health and Human Services. One may also make a complaint by calling the Customer Assistance Unit (CAU) at *1.800.766.9012* or *785.291.4144*. The hours are from 7:30am to 7:00pm. Or you may write to: Medicaid Customer Service Center, Cost Center 779, PO BOX 3571, Topeka, Kansas 66601-3571.

Under the HCBS/HI program individuals have a right to:

1. Have eligibility for services determined within 30 days.
2. Receive services as provided to persons in the same category of eligibility in accordance with the state plan, dependent on availability of service and fiscal limits.
3. Request a fair hearing if dissatisfied with the decision made on the application or if there has been undue delay in acting on the application.
4. Equal treatment with other applicants/recipients who are in similar situations.
5. Be treated with respect and have privacy.



An applicant has the responsibility to:

1. Report to their case manager if he or she plans to move. The local SRS office should also be informed.

2. Report any change in income, family size, or Supplemental Security Income (SSI) status to your worker at the local SRS office.

A consumer has the responsibility to:

1. Report fully all circumstances affecting their application;

2. Agree to a full investigation of eligibility including inquiries of employers, bankers, doctors, other business and professional persons, and a review of any agency records. Also, if the agency needs further information from employers, the consumer will be asked to sign a release. If consent is given to the release of any information from SSI and Social Security records to SRS, a Social Security number will be used only in the administration of the SRS program;

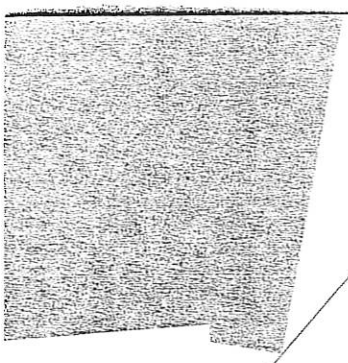
3. Report any changes in circumstances which affect eligibility;

4. Cooperate in current and subsequent agency efforts to establish eligibility;

5. Pay their share of service costs, if applicable, in accordance with the client obligation schedule.

For consumer assistance, telephone *1.800.766.9012.*

Other helpful telephone numbers begin on the facing page.



CENTERS FOR INDEPENDENT LIVING (CIL's) IN KANSAS

Access to Living Coalition for Independence, Inc.
4631 Orville, Suite 102
Kansas City, Kansas 66102
913.287.0999 v/tdd

Center for Independent Living of Southwest Kansas
111 Grant Avenue
Garden City, Kansas 67846
316.276.1900 v/tdd
1.800.736.9443¢

Independence, Inc.
2001 Haskell
Lawrence, Kansas 66046
785.841.0333
785.841.1046 tdd
1.888.824.7277

Independent Connection
1710 W Schilling Rd
Salina, Kansas 67401
785.827.9383 v/tdd
1.800.526.9731

Independent Living Center of Northeast Kansas
414 Commercial
Atchison, Kansas 66002
913.367.1830 v/tdd
1.888.845.2879

Independent Living Resource Center, Inc.
3330 W Douglas, Suite 101
Wichita, Kansas 67203
316.942.6300 v/tdd
1.800.479.6861

LINK, Inc.
2401 E 13th
Hays, Kansas 67601
785.625.6942 v/tdd
1.800.569.5926

Prairie Independent Living Resource Center
915 S Main
Hutchinson, Kansas 67501
316.663.3989
316.663.9920 tdd
1.888.715.6818

Resource Center for Independent Living
1137 Laing Street
p o box 257
Osage City, Kansas 66523
785.528.3105
785.528.3106 tdd
1.800.580.7245

Southeast Kansas Independent Living, Inc.
1801 Parsons Plaza
Parsons, Kansas 67357
316.421.5502
316.421.6551 tdd
1.800.688.5616

Three Rivers, Inc.
408 Lincoln Avenue
Wamego, Kansas 66547
785.456.9915 v/tdd
1.800.555.3994

Topeka Independent Living Resource Center
501 SW Jackson, Suite 100
Topeka, Kansas 66603
785.233.4572 v/tdd
1.800.443.2207

The Whole Person, Inc.
3100 Main, Suite 206
Kansas City, Missouri 64111
816.561.0304 v/tdd

Statewide Independent Living Council of Kansas, Inc.
700 SW Jackson, Suite 212
Topeka, Kansas 66603
785.234.6990 v/tdd
1.800.217.4525

HEAD INJURY WAIVER PROVIDERS (HIWP)

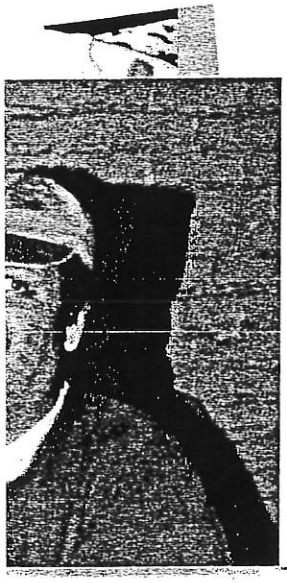
communityworks, inc.
5808 Nall
Mission, Kansas 66202
913.789.9900 v/fax

Cerebral Palsy Foundation Kansas Inc.
5111 E 21st Street
Wichita, Kansas 67208-0217
316.688.1888 v/tdd
316.688.5687 fax

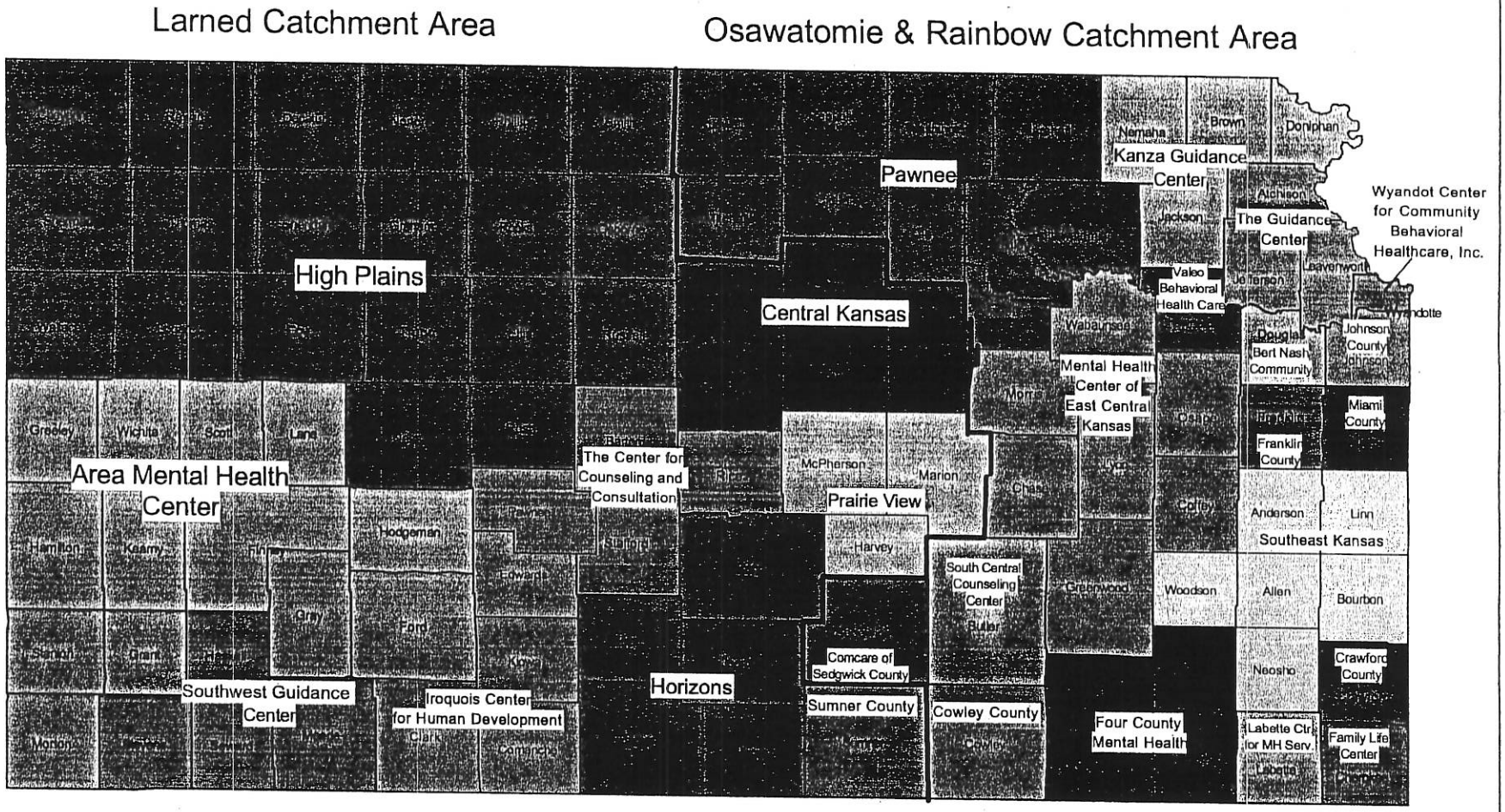
Dreamworks
636 Minnesota, Suite D
Kansas City, Kansas 66101
913.371.6070 v/tdd
913.371.6307 fax

and

10000 W 75th Street, No. 200
Shawnee Mission, Kansas 66204
913.432.9939 v/fax

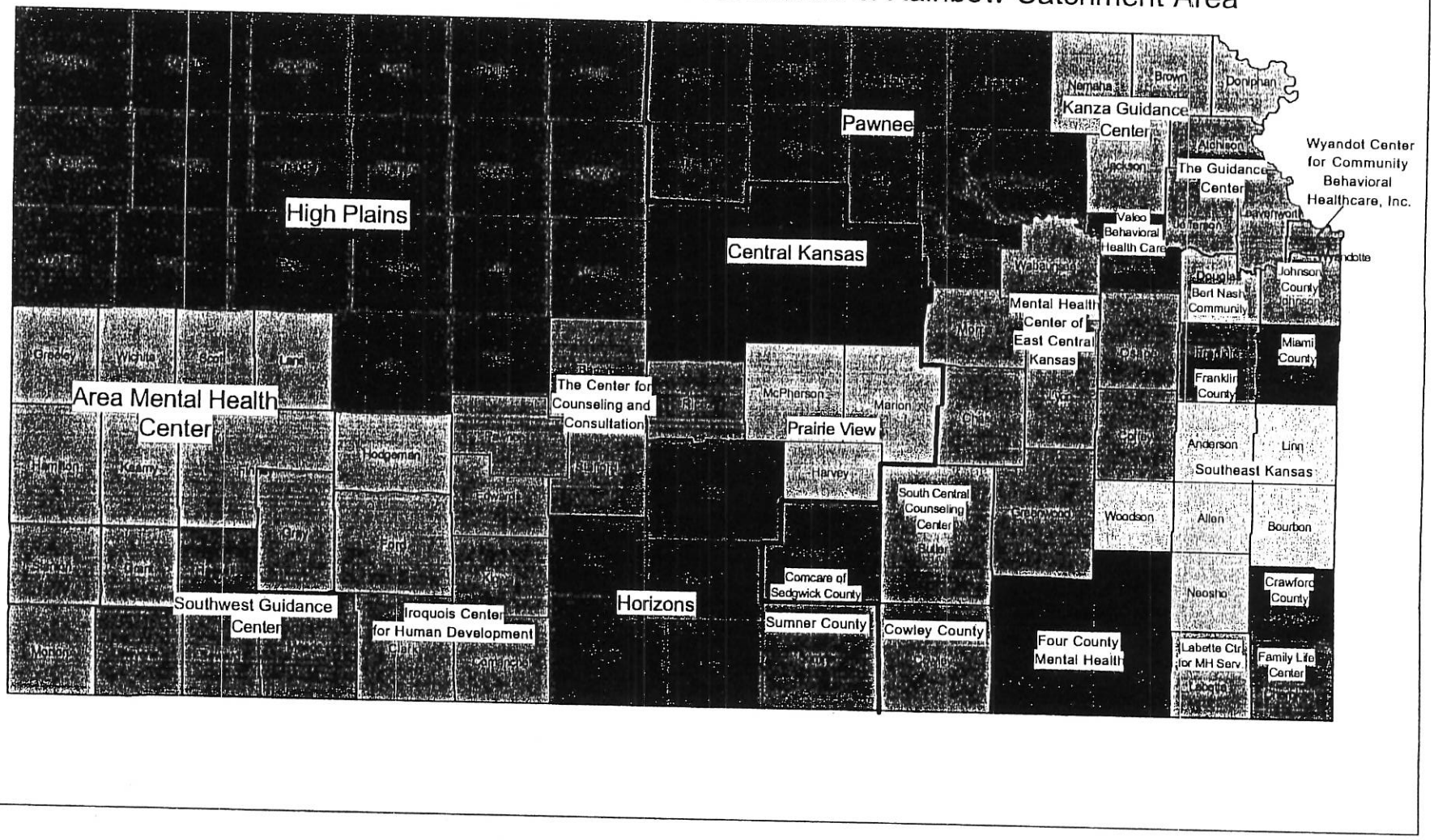


State of Kansas
Community Mental Health Centers



SRS Health Care Policy
Policy Evaluation Research Training

State of Kansas
Community Mental Health Centers



SRS Health Care Policy
Policy Evaluation Research Training

CMHC EXECUTIVE DIRECTORS

(BY CENTER)

(Updated 12/14/01)

MENTAL HEALTH CENTER ADDRESS	EXECUTIVE DIRECTOR EMAIL ADDRESS	TELEPHONE # FAX #
AREA MENTAL HEALTH CENTER 1111 EAST SPRUCE STREET GARDEN CITY KS 67846-5999	RICK H. GRAY, Ph.D. rgray@pld.com	(620) 275-0625 (620) 275-7908
BERT NASH COMMUNITY MENTAL HEALTH CENTER 200 MAINE STREET, SUITE A LAWRENCE KS 66044	DAVID E. JOHNSON djohnson@bertnash.org	(785) 843-9192 (785) 843-0264
CENTER FOR COUNSELING & CONSULTATION SERVICES 5815 BROADWAY GREAT BEND KS 67530	DWIGHT YOUNG dyoung@thecentergb.com	(620) 792-2544 (620) 792-7052
CENTRAL KANSAS MENTAL HEALTH CENTER 809 ELMHURST SALINA KS 67401	PATRICIA MURRAY murray@ckmhc.org	(785) 823-6322 (785) 823-3109
COMCARE OF SEDGWICK COUNTY 635 NORTH MAIN WICHITA KS 67203	DEBORAH DONALDSON ddonalds@sedgwick.gov	(316) 383-8251 (316) 383-7925
COMMUNITY MENTAL HEALTH CENTER OF CRAWFORD COUNTY 3101 N MICHIGAN SUITE B PITTSBURG KS 66762	RICK PFEIFFER rpfeiffer@kscable.com	(620) 231-5141 (620) 231-1152
COWLEY COUNTY MENTAL HEALTH & COUNSELING CENTER 22214 D STREET WINFIELD KS 67156	LINDA YOUNG youngl@onemain.com	(316) 442-4540 (620) 442-4559
FAMILY CONSULTATION SERVICES **(1)** 560 NORTH EXPOSITION WICHITA KS 67203	RANDALL CLASS rclass@fcswichita.org	(316) 264-8317 (316) 264-0347
FAMILY LIFE CENTER INC 201 WEST WALNUT COLUMBUS KS 66725	SCOTT JACKSON sjackson@columbus-ks.com	(620) 429-1860 (620) 429-1041

FAMILY SERVICE & GUIDANCE CENTER (2) 325 SW FRAZIER TOPEKA KS 66606-1963	DUB RAKESTRAW (retires 12/14/01) drakestraw@fsgctopeka.com	(785) 232-5005 (785) 232-0160
FOUR COUNTY MENTAL HEALTH CENTER 3751 WEST MAIN INDEPENDENCE KS 67301	RONALD DENNEY rdenney@fourcounty.com	(620) 331-1748 (620) 332-8540
FRANKLIN COUNTY MENTAL HEALTH CENTER 204 EAST 15TH STREET OTTAWA KS 66067	DIANE ZADRA DRAKE fcmhc@mail.ott.net	(785) 242-3780 (785) 242-6397
GUIDANCE CENTER 818 N 7TH STREET LEAVENWORTH KS 66048-1422	KEITH RICKARD krickard@nekmhgc.org	(913) 682-5118 (913) 682-4664
HIGH PLAINS MENTAL HEALTH CENTER 208 EAST 7TH STREET HAYS KS 67601-4199	KERMIT GEORGE kgeorge@media-net.net	(785) 628-2871 (785) 628-1438
HORIZONS MENTAL HEALTH CENTER 1715 EAST 23RD ST HUTCHINSON KS 67502-1188	JIM SUNDERLAND sunderlandj@hmhc.com	(620) 665-2240 (620) 665-2276
IROQUOIS CENTER FOR HUMAN DEVELOPMENT 103 SOUTH GROVE GREENSBURG KS 67054	C. SHELDON CARPENTER irqcenter@midway.net	(620) 723-2272 (620) 723-3450
JOHNSON COUNTY MENTAL HEALTH CENTER 6000 LAMAR, SUITE 130 MISSION KS 66202	DAVID WIEBE wiebe@jocoks.com	(913) 831-2550 (913) 826-1608
KANZA MENTAL HEALTH AND GUIDANCE CENTER 909 SOUTH SECOND STREET, P.O. BOX 319 HIAWATHA KS 66434	BILL PERSINGER bpersinger@ksmhc.org	(785) 742-7113 (785) 742-3085
LABETTE CENTER FOR MENTAL HEALTH SERVICES 1730 BELMONT, P.O. BOX 258 PARSONS KS 67357	JACK W. MARTIN, Ph.D. jackwm@par1.net	(620) 421-3770 (620) 421-0665

MENTAL HEALTH CENTER OF EAST CENTRAL KANSAS 1000 LINCOLN EMPORIA KS 66801	JOHN RANDOLPH Ph.D. randolph@cadvantage.com	(620) 343-2211 (620) 342-1021
MIAMI COUNTY MENTAL HEALTH CENTER 401 NORTH EAST STREET PAOLA KS 66071	BOB CURTIS bcurtis@mcmhc.net	(913) 557-9096 (913) 294-9247
PAWNEE MENTAL HEALTH SERVICES P.O. BOX 747 MANHATTAN KS 66505-0747	EVERETT "JAKE" JACOBS jakej@pawnee.org	(785) 587-4361 (785) 587-4377
PRAIRIE VIEW INC 1901 E 1ST STREET BOX 467 NEWTON KS 67114	MELVIN GOERING goeringmm@pvi.org	(316) 284-6400 (316) 284-6491
SOUTH CENTRAL MENTAL HEALTH & COUNSELING CENTER 2365 WEST CENTRAL EL DORADO KS 67042	BILL JOHNSTON, Acting _____	(316) 321-6036 (316) 321-6336
SOUTHEAST KANSAS MENTAL HEALTH CENTER 304 NORTH JEFFERSON, PO BOX 807 IOLA KS 66749	ROBERT F. CHASE rchase@sekmhc.org	(620) 365-8641 (620) 365-8642
SOUTHWEST GUIDANCE CENTER P.O. BOX 2945 LIBERAL KS 67905-2945	JIM KARLAN jkarlan@yahoo.com	(620) 624-8171 (620) 624-0114
SUMNER MENTAL HEALTH CENTER 1601 WEST 16TH STREET, P.O. BOX 607 WELLINGTON KS 67152-0607	GREGORY G. OLSON golsonsmhc@hotmail.com	(316) 326-7448 (316) 326-6662
VALEO BEHAVIORAL HEALTH CARE 5401 WEST 7TH STREET TOPEKA KS 66606	TOM ZABROWSKI tomz@cjnetworks.com	(785) 273-2252 (785) 273-2736
WYANDOT CENTER FOR COMMUNITY BEHAVIORAL HEALTHCARE, INC. 3615 EATON ST BOX 3228 KANSAS CITY KS 66103	PETER W. ZEVENBERGEN, JR. zevenbergen_p@wmhci.org	(913) 831-0024 (913) 831-1300

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(1) Affiliate of COMCARE of Sedgwick County
(2) Affiliate of Valeo Behavioral Health Care

JUDICIAL COUNCIL TESTIMONY
ON 2002 SB 399

2002 SB 399 was drafted by the Judicial Council Guardian Ad Litem Advisory Committee and approved for introduction by the Judicial Council. The bill amends K.S.A. 38-1505 by adding the following language:

> "When the child's position is not consistent with the determination of the guardian ad litem as to the child's best interests, the guardian ad litem or the child may request the court to appoint a second attorney to serve either as guardian ad litem or as attorney for the child."

Although this situation rarely occurs, this amendment codifies the current procedure followed by nearly all Kansas judges when the situation does occur.

In addition, the proposed amendment, "Such attorney shall allow the child and the guardian ad litem to communicate with one another but may require such communications to occur in the attorney's presence," speaks to a problem which currently arises when the Judge makes such an appointment. Rule 4.2 of the Kansas Rules of Professional Conduct (Supreme Court Rule 226) reads as follows:

> "Rule 4.2. Communication with Person Represented by Counsel. In representing a client, a lawyer shall not communicate about the subject of the representation with the party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so."

The proposed amendment meets the requirement of the rule by authorizing such contact. This allows the guardian ad litem to maintain ongoing contact with the child, even if the child is separately represented.

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Att 6

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KANSAS BAR ASSOCIATION

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

LEGISLATIVE TESTIMONY

February 6, 2002

TO: CHAIRMAN JOHN VRATIL AND MEMBERS OF THE SENATE JUDICIARY COMMITTEE

FROM: PAUL DAVIS, KBA LEGISLATIVE COUNSEL

RE: SENATE BILL 399

Chairman Vratil and Members of the Committee:

My name is Paul Davis and I serve as Legislative Counsel for the Kansas Bar Association. The Kansas Bar Association appears today as an opponent to Senate Bill 399.

Senate Bill 399 proposes to amend K.S.A. 38-1505 to allow a guardian *ad litem* or the child at issue to request the appointment of a second attorney to serve as either guardian *ad litem* or as the attorney for the child. When a guardian *ad litem* is appointed for a child, the guardian *ad litem* is appointed to represent "the best interests of the child." Obviously, many occasions arise where the wishes of the child are incongruent with the best interests of the child. Many guardian *ad litems* find this to be an awkward situation, which seems to provide the impetus for this bill.

However, there is a very good reason for the current law. Children are children and obviously they don't always know what is best for them. Guardian *ad litems* are appointed to represent the best interests of the child so that someone is truly looking out for "***the best interests of the child***." If the guardian *ad litem* simply represented whatever the child wanted, the best interests of the child would frequently not be served. As a general rule, should not the representation of children be governed by this

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approach? Guardian *ad litems* are savvy enough to identify any unusual case where additional help is required and can ask for it.

We don't believe this legislation is necessary or timely.

First, there are not many occasions where a guardian *ad litem* isn't recommending what is best for the child, and the child agrees. Our legislative committee, which includes a judge who has juvenile jurisdiction, felt the amendment unnecessary. What is accomplished by appointing a lawyer to represent an eight-year-old who doesn't want to go to school? The only reason to pass this legislation is if guardian *ad litems* aren't currently doing their jobs. We are not aware of such a problem.

The Supreme Court has set out the duties of the guardian *ad litem* by rule in "Guidelines for Guardians *Ad Litem*." If the guardian *ad litem* believes a very unusual case representation help is needed, the guardian *ad litem* can request it.

Second, this bill is going to result in the expenditure of more judicial resources. The cost of compensating attorneys or guardian *ad litems* is born by an underfunded juvenile system and many financially strapped counties. The money demand is not justified.

For the reasons stated above, we respectfully ask you to reject Senate Bill 399.

Kansas Judicial Branch

Rules Adopted by the Supreme Court District Courts

Administrative Order No. 100

Re: Guidelines for Guardians *Ad Litem*

The Supreme Court guidelines are recommended for the representation of children by guardians *ad litem* in cases pursuant to the Kansas Code for the Care of Children, K.S.A. 38-1501 *et seq.*; the Parentage Act, K.S.A. 38-1110 *et seq.*; and Domestic Relations, K.S.A. 60-1601 *et seq.* unless departure is authorized by the presiding judge or designee for good cause shown.

A guardian *ad litem* should:

1) Conduct an independent investigation consisting of the review of all relevant documents and records including those of social service agencies, police, courts, physicians (including mental health), and schools. Interviews either in person or by telephone with the child, parents, social workers, relatives, school personnel, court appointed special advocates (CASAs), caregivers, and others having knowledge of the facts are recommended. Continuing investigation and regular contact with the child are mandatory.

2) Determine the best interests of the child by considering such factors as the child's age and sense of time; level of maturity; culture and ethnicity; degree of attachment to family members, including siblings; as well as continuity, consistency, and the child's sense of belonging and identity.

3) Provide reports at every hearing, such reports being written or oral at the discretion of each judicial district.

4) Appear at all hearings to represent the best interests of the child. All relevant facts should be presented to the court and the child's position, if not consistent with the determination of the guardian*ad litem*as to best interests, shall be presented.

5) Explain the court proceedings and the role of the guardian ad litem in terms the child can understand.

6) Make recommendations for specific appropriate services for the child and the child's family.

7) Monitor implementation of service plans and court orders.

8) File appropriate pleadings on behalf of the child.

9) Participate in prerequisite education prior to appointment as a guardian *ad litem* which consists of ten (10) hours and participate in annual continuing education consisting of four (4) hours. Areas of education should include, but are not limited to, dynamics of abuse and neglect; roles and responsibilities; cultural awareness; communication and information gathering; advocacy skills; child development; mental health issues; permanence and the law; community resources; court observation; and the code for the care of children. Such hours of continuing education, if approved by the Continuing Legal Education Commission, shall apply to the continuing legal education

JUDICIAL COUNCIL TESTIMONY
ON 2002 SB 400

K.S.A. 59-706 (Section 1)

2002 SB 400 was drafted by the Probate Law Advisory Committee and approved by the Judicial Council. The bill amends K.S.A. 59-706 and 59-1706.

The amendment to K.S.A. 59-706(a) allows granting of Letters of Administration to a nonresident when the nonresident meets the same criteria as subsection (b) requires of nonresidents seeking Letters Testamentary. The proposed change will place a nonresident seeking to serve as administrator under subsection (a) in the same position as a nonresident seeking to serve as executor under subsection (b).

In addition to the requirement of the appointment of a designated agent pursuant to K.S.A. 59-1706, the appointment of any person as administrator is in the discretion of the judge (59-705) and the judge may require bond (59-1104).

K.S.A. 59-1706 (Section 2)

The Judicial Council proposes K.S.A. 59-1706 be amended by requiring a nonresident fiduciary to obtain written acceptance of the appointment by the designated agent. Currently K.S.A. 59-1706 requires that every nonresident appointed as a fiduciary shall:

1. Appoint in writing an agent residing in the county where the appointment is made.

2. Consent that service of any notice or process made upon such agent shall have the same force and effect as personal service upon the fiduciary.

3. State the correct address of such agent.

4. File the consent in the district court where the appointment is made.

This amendment adds a fifth requirement that the writing shall include written acceptance of such appointment by the designated agent.

When the Committee reviewed this section they were surprised that there was not such a requirement. There has long been a probate form which is routinely filed in every testate estate entitled "Acceptance of Appointment as Agent of Nonresident Executor."

The amendment to the section will require that such written acceptance be made in testate and intestate cases.

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BOARD OF INDIGENTS' DEFENSE SERVICES

JAYHAWK WALK
714 SW JACKSON, SUITE 200
TOPEKA, KANSAS 66603-3714

(785) 296-4505

February 6, 2002

2002 Legislative Proposals

Good morning Chairman Vratil, Senators and Staff:

It is my pleasure to appear before you today to offer testimony in support of Senate Bill Number 412. My name is Patricia A. Scalia and I serve as executive director of the Board of Indigents' Defense Services, a position I have held the last four years.

Senate Bill Number 412 would amend KSA 22-4529 to require persons requesting representation by a public defender to pay an application fee of $50.00.

Summary: The present statute calls for an assessment of an "administrative fee" of $35, in the discretion of the Court, as part of the court costs. For a number of reasons, this fee is received in only a fraction of cases. Those reasons include, the judge not addressing the issue, the repayment not being made a part of the court's order because of the form used for sentencing and the order specifying a hierarchy of payment with this payment being last.

Fiscal Impact: We estimate the potential increase to be in the range of $70,000 to $200,000 per fiscal year. This estimate is based on many assumptions regarding timeliness of court participation. We also estimate that the increase will not be fully realized until the second year of enactment.

Policy Implications and Impact on the Agency Strategic Plan: Despite its best efforts for several years, the agency has been able to negotiate a "Standing Order" for payment of the administrative fee from only one judicial district, Johnson County. The ability to receive the payment up front rather than last, if ever, will more than double the agency's payment receipts.

Enactment of legislation for an application fee seems to be the trend nationwide. As of 2001, twenty-eight jurisdictions had legislation requiring payment of an application fee for public defender services. The fees range from $10.00 in New Mexico to $200.00 in Tennessee and Massachusetts. Some states that require high application fees apply the application fee to the reimbursement of attorney fees. States that have enacted legislation requiring an application fee report that it has not only increased funds-since clients are better able to pay at the time they are charged than several months later when their case goes to trial. But they report that payment of the application fee improves the attorney/client

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relationship. Defendants who pay something toward their defense feel that they have a "real lawyer" and a greater stake in the legal proceedings.

We believe this amendment will assist us in being responsible stewards of the taxpayer's money.

If I may respond to any questions, I am at your service.

Yours truly,

Patricia A. Scalia
Executive Director

PAS:bc