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To: Joint Committee on Corrections and Juvenile Justice Oversight
From: Kimberly Lynch, KDADS, Sr. Litigation Counsel
Date: November 15, 2016
Subject: 2016 HB 2639 Emergency Observation and Treatment Act

I appreciate the opportunity to speak with you and answer questions regarding the Emergency Observation and Treatment Act, formerly introduced as HB2639. KDADS remains strongly committed to this legislation due to its impact both in addressing a critical component of the behavioral health continuum, and in facilitating crisis treatment as an alternative to detention.

This legislation facilitates efforts to develop less restrictive means to provide for the emergency custody, observation, stabilization, and treatment of individuals with a mental illness or substance abuse disorder, who are likely to cause harm to self or others, within a local community setting. Placement in a licensed crisis recovery center or other similar setting will provide additional options for local law enforcement, emergency management services, and hospital emergency departments.

Under current law, a Kansas law enforcement officer may take an individual into custody without a warrant when the officer has a reasonable belief that the individual is mentally ill and is likely to cause harm to self or others if not detained. Officers may act to protect an individual upon their personal observation in addition to the statements of others who witnessed the individual's conduct before the officer arrived on the scene.

Where emergency custody is exercised, the individual must be taken to a treatment facility for a mental evaluation. The individual may only be admitted to a treatment facility for emergency observation and treatment if a qualified mental health professional conducts an examination as soon as possible to determine whether the individual is likely to be a mentally ill person subject to involuntary commitment. If the examiner believes that the individual is a mentally ill person who is likely to cause harm to self or others unless observed and treated, the individual may be admitted to a treatment facility on written application by the law enforcement officer. This has been standard procedure in Kansas and other states for decades.

Currently, an application for determination of mental illness is required to be filed in court no later than close of the next court day. One court day does not allow mental health professionals enough time to determine the nature of the individual's mental health crisis and attempt to resolve it before involving the courts or state hospitals. This legislation extends the time from 48 to 72 hours in which to file a petition for involuntary commitment. The additional time affords clinicians the opportunity to observe, stabilize, and treat the individual in hopes of avoiding unnecessary trauma of court proceedings and involuntary commitment into a state hospital.

To the extent that an extension of time is seen as depriving an individual of procedural due process, it should be noted that 72 hours or longer is the law in many other states. As one example, the State of Rhode Island allows emergency observation and treatment for a period of time not to exceed 10 days. As another example, the State of Oklahoma allows for a period of time no to exceed 120 hours. Indiana, Kentucky, Texas, and Colorado authorize 72 hours for emergency observation and treatment.

This legislation continues to provide important procedural safeguards to individuals with a mental illness or substance abuse disorder while enabling local community efforts to better provide their citizens with the right care, in the right place, at the right time.

We appreciate the Committee's continued consideration of this important legislation.